

No. 11116

W. 2434

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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GEORGE M. McBRIDE, Trustee in Bankruptcy  
of Western Bond and Mortgage Company, an  
Oregon Corporation, Bankrupt,  
Appellant,  
vs.

C. H. FARRINGTON,  
Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the District of Oregon

FILED

1946

PAUL P. O'BRIEN,  
CLERK



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# INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Answer .....	17
Appeal:	
Certificate of Clerk to Transcript of Record on .....	80
Designation of Additional Portion of Record on (DC) .....	78
Designation of Contents of Record on (DC) .....	77
Notice of .....	76
Order to Send Exhibits to Circuit Court of Appeals .....	79
Order on Motion for Elimination of Exhibits from Printed Transcript on.....	310
Statement of Points and Designation of Record on .....	307
Certificate of Clerk to Transcript of Record on Appeal .....	80
Complaint .....	2
Designation of Contents of Record on Appeal (DC) .....	77
Designation of Additional Portions of Record on Appeal (DC) .....	78

INDEX	PAGE
Designation of Record, Statement of Points and (CCA) .....	307
Findings of Fact and Conclusions of Law.....	72
Judgment of Dismissal .....	75
Motion to Dismiss and to Make More Definite and Certain .....	12
Names and Addresses of Attorneys.....	1
Notice of Appeal .....	76
Opinion .....	60
Order on Motion for Elimination of Original Exhibits from Printed Transcript .....	310
Order to Send Exhibits to Circuit Court of Appeals .....	79
Order Upon Motion to Dismiss and to Make More Definite and Certain .....	16
Pre-Trial Order and Order Segregating Issues	19
Statement of Points and Designation of Rec- ord on Appeal (DCA) .....	307
Stipulation re Exhibits in, Record on Appeal	305
Transcript of Testimony and Proceedings, Nov. 28, 29, Dec. 6, 1944.....	82

INDEX

PAGE

Exhibits for Defendant:

Jacobs, Robert T.

—direct ..... 254

—cross ..... 256

Latourette, John R.

—direct ..... 205

Moody, Ralph E.

—direct ..... 185

—cross ..... 198

—redirect ..... 200

Teiser, Sidney

—direct ..... 211

—cross ..... 230

—redirect ..... 233

—recalled, direct ..... 264

Witnesses for Plaintiff:

Erickson, R.

—direct ..... 140

—cross ..... 153

—redirect ..... 174

McBride, George M.

—direct ..... 83

—cross ..... 97

—redirect ..... 138

Wood, Borden

—direct ..... 260

Transcript of Proceedings of March 30, 1945.. 278



NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD:

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Portland, Oregon,

for Appellant.

CARL E. DAVIDSON

and STEPHEN E. PARKER,

1525 Yeon Bldg.,

Portland, Oregon,

for Appellee.

In the District Court of the United States for the  
District of Oregon

No. 2202

GEORGE M. McBRIDE, Trustee in Bankruptcy  
of WESTERN BOND AND MORTGAGE  
CO., an Oregon Corporation, Bankrupt,  
Plaintiff,

vs.

C. H. FARRINGTON,

Defendant.

### CIVIL ACTION COMPLAINT

George M. McBride, as Trustee in Bankruptcy of Western Bond and Mortgage Co., an Oregon corporation, by his attorneys, Sidney Teiser and W. G. Keller, complaining of C. H. Farrington, alleges:

#### I.

The action arises under Sec. 67 and Sec. 70 of the United States Bankruptcy Act as amended (U.S.C.A. Title 11, Sec. 107 and U.S.C.A. Title 11, Sec. 110.)

#### II.

On or about the 25th day of November, 1931, a petition of certain creditors of Western Bond and Mortgage Co., an Oregon corporation, was duly filed in the office of the Clerk of the United States District Court for the District of Oregon, and such proceedings were duly had thereunder that on or about the 24th day of September, 1934, the Western

Bond and Mortgage Co. was duly adjudged a bankrupt, and that thereafter, on or about the 4th day of December, 1934, the plaintiff, George M. McBride, was duly appointed the Trustee in Bankruptcy of said Western Bond and Mortgage Co. and thereafter duly qualified as such trustee and is now acting as such trustee.

### III.

That on or about the 20th day of December, 1930, the defendant, C. H. Farrington, was the president and a director of the Western Bond and Mortgage Co., and the beneficial owner of all, or substantially all, [1\*] of its outstanding common and controlling stock, such stock being held in his name and in the name of a corporation, all of the stock of which said defendant owned or controlled. That at said time said defendant, in full domination and control of said company, fraudulently and with intent to defraud said company, its preferred stockholders, its bond holders, and its creditors, and for the purpose of benefitting himself, transferred to another the controlling common stock in said company, and obtained through manipulation of the Western Bond and Mortgage Co. certain property of said company, viz., all the stock of the Western Guaranty Co., of the value of \$322,014.35, without the said Western Bond and Mortgage Co. retaining anything of value for its said property.

That the method and process of said transfer and manipulation was as follows:

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\*Page numbering appearing at foot of page of original certified Transcript of Record

1. On or about the first day of December, 1930, while president and director of the Western Bond and Mortgage Co., and while in control of said company by ownership of substantially all of its common and controlling stock, said defendant, on behalf of the Western Bond and Mortgage Co., caused to be organized an Oregon corporation under the name of the Western Guaranty Co., with an authorized capital stock of \$5,000.00 par value, of which company he became president and director, and of which he had full dominance and control.

2. On December 15, 1930, without any resolution of the stockholders or directors of the Western Bond and Mortgage Co., and without any action of its board of directors, and without other authorization, defendant caused the Western Bond and Mortgage Co. to subscribe for all of the stock of the Western Guaranty Co. and in purported payment of the stock so subscribed for, transferred to said Western Guaranty Co. assets of said Western Bond and Mortgage Co. amounting to \$322,014.35 in value.

3. On December 20, 1930, at a directors' meeting of said Western Bond and Mortgage Co., of which he had up to that moment been president and director, and at which meeting he was present, the defendant permitted or caused the transfer to him, or to the Laurel Investment Co., (a [2] corporation which he wholly owned and controlled) all the said stock of the Western Guaranty Co., of the value of \$322,014.35, in purported consideration of certain securities which he had just re-



ceived from one who the moment before had succeeded him as the owner of the controlling common stock of the Western Bond and Mortgage Co., for the valueless stock in said Western Bond and Mortgage Co., which securities he held but for a moment, if at all.

4. That of the securities received by the defendant from the purchaser of the controlling common stock of the Western Bond and Mortgage Co. and immediately transferred to the Western Bond and Mortgage Co., the only securities having any value were some \$22,661.03 face value of automobile contracts receivable. Such contracts were then forthwith caused to be transferred by said Western Bond and Mortgage Co. to the holder of the newly acquired controlling common stock of said Western Bond and Mortgage Co. for other assets of no value.

That as a result of said fraudulent transfers and manipulations of the defendant just above set forth, the Western Bond and Mortgage Co. was caused to relinquish and dispose of assets of the value of \$322,014.35, for which it received and retained assets of no value, to the damage of said Western Bond and Mortgage Co. and of the plaintiff, of \$322,014.35, with interest on said sum at the rate of 6% per annum from the 20th day of December, 1930.

#### IV.

That on or about the 12th day of December, 1929, and for some time prior and subsequent thereto, the defendant, C. H. Farrington, was the president

and a director of the Western Bond and Mortgage Co., and the beneficial owner of all, or substantially all, of its outstanding stock, said stock being held in his name or the name of a corporation, all of the stock of which said defendant owned or controlled, and said defendant was in full domination and control of said company.

That at said time the Western Bond and Mortgage Co. owned and held 40,000 shares of the Consolidated Credit Corporation Class A no par [3] stock of the total value of \$120,000.00.

That at said time the Western Bond and Mortgage Co. held and was the beneficial owner of all of the stock of the Keystone Finance Co., said Keystone Finance Co. being a wholly owned subsidiary of the Western Bond and Mortgage Co.

That notwithstanding that the Western Bond and Mortgage Co. was the owner of all the stock of the Keystone Finance Co., on or about the 12th day of December, 1929, with the knowledge, consent, and at the direction of the defendant, the Western Bond and Mortgage Co., on or about said date, transferred out of the Western Bond and Mortgage Co., and to a person or persons unknown to the plaintiff, said 40,000 shares of Class A no par value stock of the Consolidated Credit Corporation of the value of \$120,000.00 in purported consideration of all the stock of said Keystone Finance Co., which said latter stock it already owned.

That said transfer was and is fraudulent and was fraudulently caused and permitted by the said

defendant, to the damage of the Western Bond and Mortgage Co. and of the plaintiff in the sum of \$120,000.00, with interest thereon at the rate of 6% per annum from the 12th day of December, 1929.

## V.

The actual fraudulent character of the transactions and transfers herein set forth was not discovered by the plaintiff until on or about the 21st day of September, 1943, and the probable fraudulent character of said transactions was not discovered until on or about the 27th day of July, 1943, at which latter time a report was made to plaintiff by a certified public accountant, who, upon authority of the Referee in Bankruptcy in charge of the Bankruptcy of Western Bond and Mortgage Co. was employed to make an examination of the books and records of the Western Bond and Mortgage Co. and the books and records of such affiliated companies as were in possession of, or available to, the trustee.

The true character of the transactions set forth in Paragraphs III and IV hereof were, by the defendant and those under his dominion and control, concealed and camouflaged by misleading and false entries on the books of the Western Bond and Mortgage Co., and were hidden and disguised by means of the [4] organization of dummy corporations to whom assets of the Western Bond and Mortgage Co. were transferred, or by whom liabilities were assumed, which entries and which jug-

gling of assets and liabilities were made and done, by and on behalf of defendant, for the purpose of keeping in ignorance and misleading those who might have the right to know the true character of said transactions. Said entries and said juggling did lull and mislead those whose right it was to know the truth, including the plaintiff.

On August 6, 1935, within one year from the adjudication of the Western Bond and Mortgage Company as a bankrupt, the United States of America filed an asserted priority claim of \$51,-451.11 for taxes additionally assessed against said Western Bond and Mortgage Co. That when said claim was filed for additional taxes, based on a revenue agent's report, the plaintiff, as trustee, searched the papers and records of the Western Bond and Mortgage Co. for such revenue agent's report, but no such report or any copy thereof was found in said papers. Plaintiff, as trustee, thereupon conferred with the Referee in charge of said estate for the purpose of obtaining an order upon the United States of America requiring the government to furnish him with a copy of such report, with the end in view of his contesting said claim of the government for taxes. At the time said claim was filed and continuously before and thereafter, until on or about the 11th day of February, 1943, the estate in bankruptcy of the Western Bond and Mortgage Co. had no funds to pay any claims over and above the cost of administration, and your trustee was thereupon instructed by the Referee in

charge of said estate that it was not necessary to make demand for or to require the production of said revenue agent's report, or to concern himself with the matter at said time, nor to make at said time any objection to the claim of the United States Government for taxes, since the allowance or disallowance of such claim would be the determination of a moot question unless funds came into the estate over and above that necessary to pay the cost of administration, and plaintiff was further directed by said Referee to withhold filing any objections to the claim of the Government until such time as the bankrupt estate might be in funds, if such time ever arrived. Accordingly, plaintiff, as trustee, made no investigation of the correctness of said claim for taxes, and made no [5] effort to obtain the revenue agent's report on which said claim was based. No funds came into said estate which could be applied to the payment of such claim until the 11th day of February, 1943, at which time a recovery was had in a suit instituted by plaintiff, as trustee, against one who had improperly received assets from the bankrupt estate.

Shortly after said funds came into the bankruptcy estate, plaintiff, as trustee, began an investigation of the United States Government's claim for taxes, for the purpose of determining whether or not objections should be filed to the claim asserted by the government for such taxes and, for the purpose of making such investigation, called upon the Collector of Internal Revenue of the United

States of America, at Portland, for a copy of the agent's report on which the United States Government's claim for taxes was based. All papers, including the agent's report, he was informed by the office of the Collector of Internal Revenue at Portland, had been sent to Washington, D. C., and that a copy of such report would be obtained for him as soon as practicable. Such report was obtained and a copy of it submitted to him by the said Collector of Internal Revenue at Portland during the first week in June, 1943.

Upon obtaining such report your trustee then made application to the Referee in Bankruptcy in charge of the estate of the Western Bond and Mortgage Co. for authority to employ a certified public accountant for the purpose of obtaining facts and data from the books and records of the bankrupt corporation, on which to base objections to the claim of the government for said taxes, and to prosecute such objections when made. Accordingly such authority was promptly granted to plaintiff, as trustee, and thereupon plaintiff employed the services of a competent certified public accountant to make such investigation. That the continuous work and services of said certified public accountant were required for a period of approximately two months before his report could be completed, and it was necessary for said certified public accountant, or any certified public accountant, to devote approximately that time in order to make the discoveries disclosed by such report. When



such discoveries were made and plaintiff informed thereof, certain other [6] factual data was necessary to be obtained in order to amplify the data supplied by said public accountant, the ascertainment of which required approximately a month of investigation by plaintiff and his attorneys.

Plaintiff nor his attorneys had any intimation or knowledge of the facts disclosed by the allegations of Paragraphs III and IV of this complaint, nor any knowledge which would put them on inquiry leading to such discovery, until plaintiff received the information contained in the said certified public accountant's report.

The estate in bankruptcy did not have sufficient funds until after the 11th day of February, 1943, with which to pay for the services of an accountant to make an investigation of the books and records of the Western Bond and Mortgage Company of the character and extent necessary to uncover the facts disclosed, even had any information come to plaintiff's knowledge leading him to suspect the fraud alleged herein.

Plaintiff has used due diligence to discover said fraud, but, notwithstanding said due diligence, and because of the cleverness of defendant in disguising and concealing the true character of the transactions, plaintiff did not discover the same until the time set forth above, and promptly after said discovery caused to be prepared this complaint, and said complaint was filed immediately after its preparation.

Wherefore, plaintiff demands judgment against the defendant, C. H. Farrington, for the sum of \$442,014.35, with interest at the rate of six per cent per annum on \$120,000.00 thereof from the 12th day of December, 1929 until paid, and with interest at the rate of six per cent per annum on \$322,014.35 from the 20th day of December, 1930, until paid.

TEISER & KELLER

/s/ SIDNEY TEISER

/s/ W. G. KELLER

Attorneys for Plaintiff

[Endorsed]: Filed October 2, 1943. [7]

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[Title of District Court and Cause.]

MOTION

Comes now defendant and moves the court for orders as follows:

(1) For an order dismissing the action on the ground

(a) That the complaint fails to state a claim upon which relief can be granted;

(b) It appears from the face of the complaint that this action is barred by the statute of limitations.

(c) It appears from the face of the complaint that plaintiff is barred by laches.



(2) For an order dismissing so much of the action as is embraced in Paragraph III thereof on the ground

(a) That said paragraph fails to state a claim upon which relief can be granted;

(b) It appears from the face of the complaint that the action on said claim is barred by the statute of limitations.

(c) It appears from the face of the complaint that plaintiff is barred by laches.

(3) For an order dismissing this action as to the claim set up in Paragraph IV of the complaint on the ground

(a) That said paragraph fails to state a claim upon [8] which relief can be granted;

(b) It appears from the face of the complaint that the action on said claim is barred by the statute of limitations.

(c) It appears from the face of the complaint that plaintiff is barred by laches.

If the foregoing motion be denied in whole or in part, or consideration thereof postponed, defendant moves the court for an order requiring plaintiff to make his complaint more definite and certain in this:

(a) That he allege what assets of Western Bond and Mortgage Co. he refers to in subparagraph 2 of Paragraph III which were transferred to West-

ern Guaranty Co. and the value of each of such assets at the time of said transfer.

(b) That he allege what securities, if any, he claims defendant traded for any property of Western Bond and Mortgage Co., setting up also the value of each item at the time of such trade;

(c) That he clarify the meaning of subparagraph 3 of Paragraph III which is now not understandable to defendant.

(d) That he allege whether he claims defendant was an officer or director of Western Bond and Mortgage Co. when said alleged trade was made.

(e) That he allege whether he claims defendant was an officer or director of Western Bond and Mortgage Co. at the time the automobile contracts referred to in subparagraph 4 of Paragraph III were transferred by Western Bond and Mortgage Co. and that he allege to whom said securities were transferred and for what consideration.

(f) That he allege what false entries in the books [9] are referred to in line 32 of page 4.

(g) That he allege what dummy corporations concealed the alleged transactions referred to in the complaint.

(h) That he set up what "juggling" hid any such transactions and what such juggling consisted of.

(i) That he allege the date the tax claim was first asserted against the bankrupt estate.

(j) That he furnish a bill of particulars setting up all of the book items upon which he intends to rely.

In presenting the motion to dismiss defendant will rely upon the proposition that it appears from the face of the first asserted claim that the trade alleged therein was consummated at a time when defendant was no longer an officer or director of Western Bond and Mortgage Co. and that he had a right to deal at arm length with said corporation, that the complaint fails to state any cause of action on account thereof and that the same is barred by the statute of limitations and laches.

As to the second claim it is not alleged that plaintiff took any Consolidated Corporation stock out of Western Bond and Mortgage Co. or in any way profited by any such alleged transaction or that it was other than the act of the corporation itself and that it affirmatively appears that the cause of action, if any, is barred by the statute of limitations and laches.

In presenting the motion to make definite and certain and for a bill of particulars, the defendant will rely upon the proposition that such information is necessary to enable defendant to prepare his pleadings and prepare for trial.

CARL E. DAVIDSON

JOHN F. REILLY

Attorneys for Defendant [10]

## NOTICE OF MOTION

To Teiser and Keller,  
738 Morgan Building,  
Portland, Oregon.  
Attorneys for Plaintiff.

Please take notice that the undersigned will bring the above motion on for hearing before this Court on the 8th day of November, 1943, at 10 A. M. or as soon thereafter as counsel can be heard.

JOHN F. REILLY

Of Attorneys for Defendant.

[Endorsed]: Filed Oct. 25, 1943. [11]

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[Title of District Court and Cause.]

ORDER UPON MOTION TO DISMISS AND  
UPON MOTION TO MAKE MORE DEFINITE AND CERTAIN AND ORDER FOR  
SEGREGATION OF ISSUES

This cause having come on this day to be heard upon Motion of the defendant to dismiss, and upon Motion to make the complaint more definite and certain, filed by the plaintiff herein, the defendant appearing by John F. Reilly, Esq., and plaintiff appearing by Sidney Teiser, Esq., and the matter having been argued and duly considered by the court;

It Is Ordered that said Motion to dismiss is hereby reserved for determination by the court

either at the time of pre-trial or at the time of trial, as the court deem proper; and

It Is Further Ordered that defendant be, and he hereby is, directed to answer the complaint herein; and

It Is Further Ordered that the Motion to make the complaint more definite and certain be and the same is hereby denied.

And, upon motion made in open court by the attorney for the defendant, to which no objection was raised by attorney for plaintiff;

It Is Ordered that there be a segregation of issues, and that the issue as to whether or not the claims of plaintiff set forth in his complaint are barred by the Statute of Limitations or by laches, be first determined, and that other issues be determined thereafter.

Dated at Portland, Oregon, this 29 day of November, 1943.

JAMES ALGER FEE

Judge

[Endorsed]: Filed Dec. 1, 1943. [12]

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[Title of District Court and Cause.]

ANSWER

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

## Second Defense

Defendant admits the allegations of Paragraphs I and II of the complaint; denies all of the allegations of Paragraph III except he admits that in the fore part of December, 1930, he owned stock in the Western Bond & Mortgage Company and that there was a corporation organized under the laws of Oregon named the Western Guaranty Co. which was a subsidiary of Western Bond & Mortgage Company, and further admits that in December, 1930 he sold his stock in Western Bond & Mortgage Company, after which he was no longer a director, officer or stockholder of said corporation and that thereafter he purchased from Western Bond & Mortgage Company the stock of Western Guaranty Co.; denies all of the allegations of Paragraph IV, except he admits that somewhere about the time mentioned Western Bond & Mortgage Company owned some stock in Consolidated Credit Corporation, the details of which are no longer in the memory of defendant; denies all of the allegations of Paragraph V except the allegations about a tax claim by the U. S. Government against Western Bond & Mortgage Company and as to such allegations defendant says that he is [13] without knowledge or information sufficient to form a belief as to the truth of those allegations.

## Third Defense

The alleged right of action or rights of action set forth in the complaint did not accrue within

ten years next before the commencement of this action or within eight years after plaintiff and his predecessors in interest knew or in the exercise of reasonable diligence should have known of the facts connected with said transactions.

#### Fourth Defense

Plaintiff is barred from prosecuting this action by laches.

REILLY & DAVIDSON

Attorneys for Defendant

[Endorsed]: Filed Dec. 2, 1943. [14]

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[Title of District Court and Cause.]

#### PRE-TRIAL ORDER AND ORDER SEGREGATING ISSUES

This case came before this Court on Friday, April 14, and on Saturday, April 15, for pre-trial under the provisions of Rule 16 of Rules of Civil Procedure of the District Courts of the United States.

Plaintiff was represented by Sidney Teiser of Teiser & Keller, and defendant was represented by John F. Reilly of Reilly & Davidson. After preliminary discussion, which included the statement by counsel of their respective contentions, the parties, with the aid of the Court, undertook to determine what facts, if any, might be agreed upon, and what documents or writings might be admitted as



genuine, or copies of writings or documents might be accepted in lieu of the originals and admitted as genuine. Therefore, based upon said proceedings,

It Is Ordered that the following facts, having been agreed upon, may be considered at the trial as having been proven without the necessity of the introduction of any evidence concerning the same by either party.

### I. AGREED FACTS

1. On December 12, 1929, the defendant owned or controlled approximately two-thirds of all the voting stock of the Western Bond and Mortgage Company. On December 20, 1930, the defendant or the Laurel Investment Company owned in excess of five-sixths of the voting stock of the Western Bond and Mortgage Company. The defendant owned or controlled substantially [15] all of the stock of Laurel Investment Company on said latter date, and was its president. From December 12, 1929, to some time during the day of December 20, 1930, the defendant was a stockholder and president and director of the Western Bond and Mortgage Company.

2. That on the first day of December, 1930, the Western Bond and Mortgage Company caused the organization of a corporation known as the Western Guaranty Company, an Oregon corporation, with authorized capital stock of 500 shares, of the par value of \$10.00 each. At least two of the incor-



porators of the Western Guaranty Company were employees of Western Bond and Mortgage Company. The minutes of the Western Bond and Mortgage Company contain no reference to this incorporation of the Western Guaranty Company.

3. Under date of December 15, 1930, the books of the Western Bond and Mortgage Company record a transaction whereby assets carried on the books of the corporation were transferred to Western Guaranty Company for all of the stock of said company. The particular journal entries on the books of the Western Bond and Mortgage Company in reference to this transaction are as follows:

## PLAINTIFF'S PRE-TRIAL EXHIBIT No. 6

## WESTERN BOND &amp; MORTGAGE CO.

## Journal Entry Voucher

Date	Dec. 15, 1930	No.	49962
Account	Debit	Credit	
Stock Purchase Liability.....	1,531,520.70		
Accrued Int. on Stock Sales.....	24,698.22		
Stock Sales—Oregon .....	213,156.59	566,265.00	
“ “ —Washington .....	33,019.50	83,295.00	
“ “ —Utah .....	9,275.15	28,065.00	
“ “ —Colorado .....	35,103.17	99,285.00	
“ “ —Montana .....	24,987.70	62,220.00	
“ “ —Wyoming .....	20,175.38	49,080.00	
“ “ —Idaho A.....	110,719.70	305,790.70	
“ “ — “ C .....	73,441.40	177,010.00	
“ “ —Misc. ....	58,496.96	160,510.00	
Notes Payable—Consol. Cr. Corpn.....	161,478.00		
Profit Sales.....	84,585.85		

Account	Debit	Credit
Corpn. Stocks Owned—Western		
Guaranty Co.....	227,228.50	
Corpn. Stock Trusteed on		
Stock Sales.....		603,487.50
Def. Dis. on Stock Purchases		245,650.12
Corpn. Stock Owned—		
Consol. Cr. Corpn.....		40,008.50
Corpn. Stock Pl. on Notes Payable....		187,220.00
No record transfer of Conversion accounts to Western Guaranty Co. and to set up cost of stock of that company.		

Approved \_\_\_\_\_ I Hereby Certify That the  
 \_\_\_\_\_ Above Entry Is Correct  
 Auditor M. D.

## DEFENDANT'S PRE-TRIAL EXHIBIT No. 5

### WESTERN BOND & MORTGAGE CO.

#### Journal Entry Voucher

Date Dec. 15, 1930 No. 49964

Account	Debit	Credit
Corpn. Stock Owned.....	10,200	
(West. Guar. Co.)		
Notes Payable (Consol. Cr. Co.....	7,000	
Corpn. Stock Owned.....		17200
(Baldy Finance Co.)		

To record additional cost of Western Guaranty Co. stock and to transfer Baldy Finance Co. stock.

Approved \_\_\_\_\_ I Hereby Certify That the  
 \_\_\_\_\_ Above Entry Is Correct  
 Auditor M. D.

The minutes of the Western Bond and Mortgage Company contain no reference to this transaction.

4. That on or about the 20th day of December, 1930, defendant or Laurel Investment Company, or both, sold and transferred all their common or voting stock in the Western Bond and Mortgage

Company to Massachusetts Mortgage Company or to one E. F. O'Flynn, its president, receiving therefor the following:

(a) 100 shares of capital stock of Lake Lucerne Company, a Washington corporation, without par value.

(b) Conditional sales contract on automobiles, with unpaid balances amounting to \$22,661.03.

(c) Mortgage from Ljungdahl Products Co. to Massachusetts Mortgage Co., recorded in Records of Chattel Mortgage, Pierce County, Wash., amount of unpaid principal \$24,750.00.

(d) Note, W. I. Birwell to Massachusetts Mortgage Co. dated October 6, 1930, \$19,477.70.

(e) Note of Massachusetts Mortgage Co. to Laurel Investment Co. dated December 20, 1930, for \$87,000.00. [17]

5. That on December 20, 1930, at a special meeting of the directors, at which defendant presided, W. E. Johnson and E. F. O'Flynn were elected to fill two vacancies on the board of directors. The meeting then recessed for half an hour and re-convened, whereupon the resignation of defendant as director and president, and of V. Lyle McCroskey as director and secretary of the Western Bond and Mortgage Company having been tendered, were accepted. The Board of Directors then elected W. B. Johnson as president and E. F. O'Flynn as secretary-treasurer, and W. E. Johnson presided at the re-convened meeting and E. F.

O'Flynn acted as secretary. The following resolutions were thereupon adopted:

“Resolved that the President and Secretary be and they are hereby authorized and directed to transfer, assign and deliver to the Laurel Investment Company all of the capital stock of Western Guaranty Co. consisting of 500 shares of the par value of \$10.00 each and in exchange therefor to take an assignment and delivery of certain assets from the Laurel Investment Company, an itemized schedule of which is set forth in Exhibits “A” and “B” presented to this meeting and a copy of which is attached to the minutes hereof.”

(The assets listed in said exhibits consisted of the same assets as those referred to in (a) to (e), inclusive, of Paragraph 4 of Agreed Facts in this pre-trial order, except that the conditional sales contracts are itemized.)

“Further Resolved that it is the judgment of the directors that the assets received by this corporation in said exchange are of equal or greater value than those so to be assigned to Laurel Investment Company and that it is for the best interest of this corporation that said exchange be made.”

6. That on the 20th day of December, 1930, Laurel Investment Company transferred to the Western Bond and Mortgage Company the assets mentioned (set forth as a, b, c, d, and e in paragraph 4 of these Agreed Facts) and received from the Western Bond and Mortgage Company therefor all of

the capital stock of the Western Guaranty Company.

7. That on or about the 12th day of December, 1929, the Western Bond and Mortgage Company owned and held 40,000 shares of the Consolidated Credit Corporation Class A no par stock. [18]

8. That fee simple title to the property known as Russell Ranch (described more particularly in two deeds marked pre-trial exhibit 53 and 54) was in C. H. Russell on April 30, 1925, and that on said date C. H. Russell deeded the property to Russell Land & Livestock Company, which deed was recorded on May 4, 1925; that the Russell Land & Livestock Company held such property until December 20, 1929, when it deeded it to the Keystone Finance Company, and that the Keystone Finance Company held said property until February 13, 1932, when it deeded it to the Ochocho Farms Corporation, the latter deed being filed for record on May 2, 1932; and that an abstract of title to said property, if it were introduced at the trial, would show such title and such transfers, and none others during said period; and that at no time will an abstract of the title to said Russell Ranch show that E. C. Tapfer, F. A. Tapfer, or F. H. Snodgrass owned any interest in or to said Russell Ranch.

9. That on March 13, 1931, there was filed in the District Court of the United States for the District of Oregon, a complaint in equity, No. E-9189, wherein one John Brockie was plaintiff and

Western Bond and Mortgage Company, C. H. Farrington (the defendant herein), Laurel Investment Company, Western Guaranty Company, and others, were defendants. In said complaint many charges of misappropriations were made against this defendant and others. Among such many charges was one which made some reference to the transactions referred to in paragraphs 4, 5, and 6 of the Agreed Facts.

10. That the defendant herein filed an answer in said Brockie suit and the other defendants pleaded therein and the cause came on for trial before a referee appointed by said court. Plaintiff in said cause filed a motion for leave to dismiss said suit. That defendant resisted said motion. The motion was allowed but the plaintiff therein was ordered to pay all of the costs of all the parties, including the fees of the referee. Said suit was thereupon dismissed.

11. Thereafter and on July 14, 1931, one H. C. Thompson and other bond holders and stockholders of Western Bond and Mortgage Company filed a suit in the Circuit Court of the State of Oregon for Multnomah County, [19] against the Western Bond and Mortgage Company and others, but the said C. H. Farrington was not made a party in said suit.

12. Thereafter and in September, 1931, a suit was brought in the Circuit Court of the State of Oregon for Multnomah County wherein Edward Pape and sixteen other bondholders or creditors

of Western Bond and Mortgage Company were plaintiffs and the Western Bond and Mortgage Company and others were defendants, but in this case also C. H. Farrington was not made a party.

13. On or about November 25, 1931, a petition of certain creditors of Western Bond and Mortgage Company praying that said corporation be adjudged a bankrupt was filed in the United States District Court for the District of Oregon.

14. During the year 1934 and prior to the 20th day of July, 1934, the Corporation Department of the State of Oregon, at the instance and request of certain bondholders and stockholders of Western Bond and Mortgage Company investigated the affairs of Western Bond and Mortgage Company and intervened in said bankruptcy proceeding.

15. Plaintiff herein was appointed receiver of said corporation on August 13, 1934, and on December 12, 1934, was appointed Trustee in Bankruptcy of Western Bond and Mortgage Company; and he has acted in the capacity of said trustee ever since.

## II. DOCUMENTARY EVIDENCE

That the following exhibits submitted at the pre-trial by plaintiff or by the defendant may be received in evidence, without the necessity of proof as to their authenticity, but subject to all other objections, and where copies instead of originals are presented, such copies may be received in evidence as though they were originals.



## Plaintiff's Exhibits:

1. Eight stock certificates of Western Bond & Mortgage Company;
2. Letter dated January 12, 1931, Massachusetts Mortgage Company by N. Foley to W. E. Johnson;
3. Proxy issued to E. F. O'Flynn and signed Massachusetts Mortgage Co., by its Secretary;
4. Transfer from Laurel Investment Company to Western Bond and Mortgage Company, dated December 20th, 1930, with Exhibit "A" attached;
5. Journal Entry Voucher No. 49964 of Western Bond & Mortgage Co.
6. Journal Entry Voucher No. 49962 of Western Bond & Mortgage Co.
7. Certified copies of Articles of Incorporation and Annual Report for fiscal year ending June 30, 1931, of Western Guaranty Co.
8. Photostatic copy of Report of Examining Officer L. C. Gunning, dated October 19, 1932, with letter dated Nov. 8, 1932, signed by C. H. Farrington addressed to Internal Revenue Agent in Charge, Portland, Oregon, and photostatic copy of Protest of C. H. Farrington covering year 1930, attached;
9. Photostatic copy of Petitioner's Reply Brief in C. H. Farrington vs. Commissioner of Internal Revenue;



10. Minute book of Western Bond and Mortgage Company, with particular reference to minutes of meeting of December 20th, 1930, of stockholders, and of June 12th, 1930, of directors;

11. Photostatic copy of document dated September 19, 1932, C. H. Farrington to Commissioner of Internal Revenue, headed, "Protest";

12. Photostatic copy of Petition in case of C. H. Farrington, Petitioner, vs. Commissioner of Internal Revenue, before United States Board of Tax Appeals;

13. Photostatic copy of Answer in case of C. H. Farrington v. Commissioner of Internal Revenue;

14. Photostatic copy of Reply in same case;

15. Photostatic copy of decision in same case.

16. Journal Entry Voucher No. 53016, dated April 30, 1933;

17. Journal Entry Voucher No. 50618, dated May 21, 1931;

18. Journal Entry Voucher No. 50199, dated February 6, 1931;

19. Journal Entry Voucher No. 53015, dated April 30, 1933;

20. Certificate No. 9 of Ljungdahl Products Corporation for 250 shares of preferred stock to Western Bond and Mortgage Company, dated December 31, 1930, etc.

21. Certificate No. 3 for 2000 shares issued by Insurance Building Corporation to Massachusetts Mortgage Company, dated May 21, 1931;

22. Certificates No. 31 issued by Tacoma Products Co. for 15,706 shares of preferred stock to Western Bond & Mortgage Company, dated March 19, 1932; [21]

23. Letter dated April 5, 1933, Massachusetts Mortgage Co. to E. E. Gallagher;

24. Assignment of Mortgage from Western Bond and Mortgage Company to Tacoma Wood Products Company, dated April 1st, 1932;

24½. Carbon duplicate of last document, undated and unsigned;

25. Assignment of Mortgage from Western Bond and Mortgage Company to Lawyers Title and Trust Company, dated February 20, 1931;

26. Letter dated February 20, 1931, E. E. Gallagher, Western Bond and Mortgage Company, to Lawyers Title & Trust Co.

27. Receipt dated April 6, 1933, signed Western Bond and Mortgage Company, by E. E. Gallagher, showing receipt from Lawyers Title & Trust Company of mortgage of Tacoma Wood Products Company;

28. Note dated April 1, 1932, for \$24,750.00, executed by Tacoma Wood Products Company to Western Bond & Mortgage Company;

29. Mortgage from Tacoma Wood Products Company to Western Bond & Mortgage Company, dated April 1st, 1932;

30. Check dated May 4, 1933, signed by Assistant Manager of The Bank of California, payable to County Recorder, Pierce County, Wn., for \$1.50;

31. Letter dated March 21, 1933, Massachusetts Mortgage Company to Western Bond & Mortgage Co.

31A. Copy of letter attached to last above exhibit dated March 23, 1933, Western Bond and Mortgage Company to Massachusetts Mortgage Company;

32. Copy of letter dated June 17, 1933, Western Bond and Mortgage Company to M. Cleverly, c/o Massachusetts Mortgage Company;

33. Letter dated June 14, 1933, C. H. Renschler, County Auditor, to Western Bond and Mortgage Company, with envelopes attached;

34. Copy of letter dated June 15, 1933, Western Bond and Mortgage Company, to A. L. Kelly, Deputy County Auditor, Pierce County;

35. Letter dated June 7, 1933. M. Cleverly to Miss E. E. Gallagher;

36. Copy of letter dated May 3, 1933, Western Bond and Mortgage Company, to County Recorder, County of Pierce;

37. Letter dated May 5, 1933, C. H. Renschler, County Auditor, by A. L. Kelly, Deputy, to Western Bond and Mortgage Company;

38. Copy of letter dated May 9, 1933, Western Bond and Mortgage Company to Miss A. L. Kelly, Deputy, c/o County Auditor's Office, Pierce County; [22]

39. Letter dated May 10, 1933, C. H. Renschler, County Auditor, to Western Bond & Mortgage Company;

40. Letter (copy) dated May 17, 1933, on stationery of Western Bond & Mortgage Co., to M. Cleverly, Massachusetts Mortgage Company;

41. Duplicate copy of last above exhibit;

42. Letter dated May 16, 1943, M. Foley to "Dear Miss Gallagher";

43. Copy of letter dated June 2, 1933, Western Bond and Mortgage Company, to Miss M. Cleverly;

44. Note dated December 20, 1930, for \$87,000.00, payable to Laurel Investment Company, signed Massachusetts Mortgage Company, etc.;

45. Carbon copy of letter dated April 22, 1931, W. E. Johnson, President, to E. F. O'Flynn, etc.;

46. Journal Entry Voucher No. 43617 of Western Bond & Mortgage Co., dated December 12, 1929;

47. Western Bond and Mortgage Company Voucher No. G 75687;

48. Western Bond and Mortgage Company Voucher No. G 75686;

49. Minute Book of Keystone Finance Co.
50. Stock Book of Keystone Finance Company;
51. Document headed "Information Return of Subsidiary or Affiliated Corporation for calendar year 1928" of Russell Land & Livestock Company;
52. "Affiliations Schedule to be filed with each Consolidated Return," "Taxable year ended December 31, 1930," parent corporation Western Bond & Mortgage Company;
53. Deed between Russell Land & Livestock Co. and Keystone Finance Co., dated December 20th, A. D. 1929;
54. Deed from Russell Land & Livestock Co. to Keystone Finance Co., dated December 20th, A. D. 1929;
55. Book designated "Russell Land and Livestock Minute Book";
56. "Corporation Income Tax Return for Calendar Year 1929" by Western Bond & Mortgage Company and Affiliated Companies;
57. Capital stock ledger of Western Bond & Mortgage Co.
58. Certificate book of Western Bond and Mortgage Company;
59. Copy of letter dated May 27, 1943, from Treasury [23] Department, Washington, to Collector of Internal Revenue, Portland, etc.
60. Copy of letter dated May 7, 1943, from

Treasury Department, Washington, to Collector of Internal Revenue, Portland, etc.

103. Volume 1 of Transcript in case of The Bank of California, National Association, vs. George M. McBride, Trustee;

103-A. Volume 2 of Transcript, same case;

162. Credit file Bank of California -F.

Defendant's Exhibits:

61. By-Laws of Western Bond and Mortgage Company;

62. Copy of Complaint in case of John Brockie v. Western Bond & Mortgage Company, et al.;

63. Copy of article from Oregon Journal of March 13, 1931;

64. Copy of article from Portland Telegram of March 13, 1931;

65. Copy of article from The Oregonian of March 14, 1931;

66. Answer of Western Bond and Mortgage Company and Beacon Investment Company in case of John Brockie vs. Western Bond and Mortgage Company, et al.;

67. Answer of C. H. Farrington in last above case;

68. Motion to dismiss filed by plaintiff in above case;

69. Copy of memorandum of defendants Lau-

rel Investment Company, Western Guaranty Company and C. H. Farrington opposing motion of plaintiff to dismiss in above case;

70. Journal entry of this Court in said case on July 27, 1931;

71. Copy of order dismissing suit in last above case;

72. Copy of article from The Oregon Journal of July 13, 1931;

73. Copy of article from The Oregonian of July 14, 1931;

74. Copy of complaint in case of H. C. Thompson, et al, vs. Western Bond & Mortgage Company, et al, in Circuit Court of Oregon for Multnomah County; [24]

75. Copy of article from Oregon Journal of July 14, 1931;

76. Copy of article from The Oregonian of July 15, 1931;

77. Motion, with affidavit of Oscar Furuset attached, in case of Edward Pape, et al, v. Western Bond and Mortgage Co., et al, in Circuit Court of Oregon for Multnomah County;

78. Copy of article from Oregon Journal of July 19, 1934;

79. Copy of article from The Oregonian of Friday, July 20, 1934;

80. Article from Oregon Journal, Saturday, Au-

gust 4, 1934, and article from Oregon Journal of Monday, August 13, 1934;

81. Copy of article from Oregon Journal of August 14, 1934;

82. Copy of article from The Oregonian of August 4, 1934;

83. Copy of article from The Oregonian of August 14, 1934;

84. Copy of article from The Oregonian of August 19, 1931;

85. Copy of article from Oregon Journal of September 10, 1931;

86. Copy of amended complaint in H. C. Thompson, et al, vs. Western Bond & Mortgage Company, et al, in Circuit Court of Oregon for Multnomah County;

87. Copy of order of October 6, 1931, in last above case;

88. Copy of affidavit of Allen H. McCurtain in last above case;

89. Copy of amended petition in case of The Bank of California, N. A., vs. George McBride, Trustee of Western Bond and Mortgage Company;

90. Copy of Findings of Fact in last above case;

91. Copy of Motion of The Bank of California;

92. Copy of Affidavit of Harvey N. Black;



93. Copy of Affidavit of W. Lair Thompson;
94. Copy of Opinion of Judge Fee;
95. Copy of Order upon Motion to Rehear and Rehearing;
96. Copy of Testimony of E. E. Gallagher;
97. Copy of Testimony of R. Erickson;
98. Copy of Testimony of William Kennedy;
99. Copy of Testimony of Thomas G. Greene;
100. Copy of Colloquy between counsel;
101. Copy of Testimony of E. F. Munly;
102. Copy of Testimony of George M. McBride;
104. Copy of Order Authorizing Trustee to Retain Attorney in Matter of Western Bond & Mortgage Co., Bankrupt, No. B-16772, in District Court of United States for District of Oregon;
105. Copy of Petition for Order to Show Cause filed July 16, 1936, same Matter;
106. Copy of Order Appointing Counsel for Trustee in same Matter;
107. Copy of Petition for Approval of Agreement filed April 16, 1937, in same Matter;
108. Copy of Examination of Witnesses under Section 21-A, filed May 17, 1937, containing excerpts from testimony of Mr. William G. Brown and Dr. John H. Besson;
109. Copy of Order Confirming Agreement regarding Attorney's fees;

110. Copy of Order Directing Trustee to pay certain expenses;

111. Copy of Financial Report and Petition of Trustee;

112. Copy of letter dated July 20, 1936, R. Erickson to Sidney Teiser;

113. Copy of statement dated February 13, 1943, rendered by R. Erickson & Co. to George McBride, Trustee, amount \$2,500.00;

114. Copy of Order to pay Attorneys and Accountant, filed April 23, 1943;

115. 3 sheets, first bearing statement "(Standard Company)," and further statement "(Copy from 'Certified Valuation, Ljungdahl Products Co., Tacoma, Washington, Standard Appraisal Company'";

116. Copy of Appraisal of Lake Lucerne property;

117. Copy of Appraisal in re "Certified Valuation, Tahoma Apartments, Tacoma, Washington, Standard Appraisal Company";

118. Letter dated December 19, 1930, J. P. Gleason, Chairman, to C. H. Farrington, President, Western Bond & Mortgage Co.;

119. Journal Entry Voucher No. 43614;

120. Journal Entry Voucher No. 43615; [26]

121. Journal Entry Voucher No. 43616;

122. Journal Entry Voucher No. 43240;

123. Journal Entry Voucher No. 43665;
124. Journal Entry Voucher No. 49535;
125. Journal Entry Voucher No. 49640;
126. Journal Entry Voucher No. 49641;
127. Journal Entry Voucher No. 49643;
128. Journal Entry Voucher No. 49796;
129. Journal Entry Voucher No. 49963;
130. Journal Entry Voucher No. 49976;
131. Journal Page 6941;
132. Journal Page 7120;
133. Ledger sheet of Western Bond and Mortgage Company, "Sheet 1, Corporation Stocks Owned" and on other side "Sheet 2, Corporation Stocks Owned," with pencil memorandum attached;
134. Minutes of Special Meeting of Board of Directors of Western Bond and Mortgage Company held June 5th, 1930;
135. Waiver and relinquishment of payment of dividends dated July 1st, 1930, signed Tilla S. Farrington;
136. Waiver and relinquishment of payment of dividends signed Laurel Investment Company;
137. Waiver and relinquishment of payment of dividends dated July 1st, 1930, signed C. H. Farrington;

138. Waiver and relinquishment of payment of dividends dated July 1st, 1930, signed V. Lyle McCroskey;

139. Waiver and relinquishment of payment of dividends, signed by Oak Service Corporation, etc.

140. Waiver and relinquishment of payment of dividends dated July 1st, 1930, signed C. H. Farrington and Tilla S. Farrington;

141. Minutes of Special Meeting of Board of Directors of Western Bond and Mortgage Company held June 6th, 1930; [27]

142. Waiver of Notice of Directors Meeting of Western Bond and Mortgage Company, dated December 28th, 1930, signed C. H. Farrington, J. W. Latimer and V. Lyle McCroskey;

143. Minutes of Special Meeting of Board of Directors of Western Bond and Mortgage Company held December 20th, 1930;

144. Oath of Directors;

145. Resignation of V. Lyle McCroskey as Secretary-Treasurer and Director of Western Bond and Mortgage Company dated December 20, 1930;

14. Resignation as President and Director of Western Bond and Mortgage Company by C. H. Farrington, dated December 20, 1930;

147. Resignation as Assistant Secretary of Western Bond and Mortgage Company by E. Hagenbucher, dated December 20, 1930;

148. Photostatic copy of letter dated December

19, 1930, J. P. Gleason, Chairman, to C. H. Farrington, President, Western Bond and Mortgage Co., on stationery of American Exchange Bank of Seattle;

149. Continuation of Minutes of Special Meeting of Board of Directors of Western Bond and Mortgage Company, 2 pages;

150. Four pages typewritten matter, first page headed "Exhibit A," remaining three consisting of tabulations;

151. Oath of Director E. J. Boxer;

152. Journal Entries Aug. 1, 1929, to Jan. 1, 1930;

153. Journal Entries Jan. 1, 1930, to Jan. 1, 1931;

154. Journal Entries, Jan. 1, 1931, to Jan. 1, 1932;

155. Petition in Intervention in the matter of Western Bond & Mortgage Co., a corporation, In Bankruptcy, B. 16722.

156. Letter to I. H. Van Winkle, Attorney General, to Creditors, dated Nov. 24, 1934. [28]

157. Form of Proof of Claim and Power of Attorney;

158. Voucher, State of Oregon, in amount of \$490.85—2 pages.

159. Check in payment of voucher marked "Defendant's Pre-Trial Exhibit 158," (two pages);

160. Voucher, State of Oregon, in amount of \$900.00, (3 pages);

161. Check in payment of voucher marked "Defendant's Pre-Trial Exhibit 160."

162. Credit file of Bank of California.

[Marginal Note]: Amendment by order 12/6/44.  
By R De.

### III. CONTENTIONS OF PLAINTIFF

Plaintiff contends that:

C. H. Farrington, the defendant, defrauded the Western Bond and Mortgage Company, now bankrupt, of which company plaintiff, George M. McBride, is trustee in bankruptcy, in the manner and to the extent set forth in the following two claims:

#### First Claim

On or about the 20th day of December, 1930, C. H. Farrington acquired in exchange for his stock in the Western Bond and Mortgage Company of no value, certain assets of the Western Bond and Mortgage Company of the value of \$322,014.35, viz., the stock of the Western Guaranty Company, leaving the Western Bond and Mortgage Company holding, in lieu of said stock of the Western Guaranty Company, certain choses in action of practically no value.

Said Farrington acquired the said valuable Western Guaranty Company's stock in exchange for his worthless stock in the Western Bond and Mortgage Company by the following pre-arranged method and means:

Step 1. On December 1, 1930, while in control of the Western Bond & Mortgage Company, and while its president and director, and therefore while acting in a trustee capacity, C. H. Farrington caused, without authority so to do, to be organized a company known as the Western Guaranty Company, by office employees of the Western Bond and Mortgage Company and, without authority of the board of directors or stockholders, caused the Western Bond and Mortgage Company to subscribe to all of the stock of said Western Guaranty Company, par value \$5,000.00.

Step 2. On December 15, 1930, while acting in like capacity and while in like control, without any authority of the board of directors of the Western Bond and Mortgage Company, or of its stockholders, C. H. Farrington caused to be paid for the subscription of the Western Bond and Mortgage Company to the capital stock of the Western Guaranty Company certain assets of the Western Bond and Mortgage Company of a value of \$322,014.35; the Western Guaranty Company thereupon holding assets of the net value of \$322,014.35 and the Western Bond and Mortgage Company holding the stock of said Western Guaranty Company of like value.

Step 3. On December 20, 1930, C. H. Farrington, while acting in like capacity and while in like control, at a cost to him of \$5,000.00 commission, paid to a manipulator who had had frequent dealings in his [30] behalf, entered into an arrangement



whereby he, the said C. H. Farrington, transferred and conveyed all his stock and all of the stock which he controlled in the Western Bond and Mortgage Company (which was substantially all the outstanding voting stock in said company) to the Massachusetts Mortgage Company in exchange for certain securities or choses in action of doubtful if any value, viz.:

a. 100 shares non par stock Lake Lucerne Co. (a Washington corporation) par value \$100,000.00;

b. Conditional sale contracts on automobiles; face value \$22,661.03;

c. Mortgage from Ljungdahl Products Co. to Massachusetts Mortgage Co. recorded in records of Chattel Mortgage, Pierce County, Wash., Amount of unpaid principal \$24,750.00;

d. Note, W. I. Birwell to Massachusetts Mortgage Co. dated Oct. 6, 1930, face value \$19,477.70;

e. Note of Massachusetts Mortgage Co. to Laurel Investment Co. dated December 20, 1930, for \$87,000.00;

Step 4. On the same day, and practically simultaneously with his resignation as a director and president of the Western Bond and Mortgage Company, said C. H. Farrington transferred said valueless securities, through a corporation which he owned and controlled, (the Laurel Investment Company) to the Western Bond and Mortgage Company, and in exchange therefor obtained from the Western Bond and Mortgage Company the stock



of the Western Guaranty Company owned by the Western Bond and Mortgage Company of a value of \$322,014.35.

Thus, through the four steps above outlined, C. H. Farrington, while acting in the capacity of a trustee for said Western Bond and Mortgage Company, obtained property from it of a value of over \$300,000.00 in exchange for his stock in said company of no value, to the loss and damage of the Western Bond and Mortgage Company in the amount of \$322,014.35.

### Second Claim

On or about the 12th day of December, 1929, the Western Bond and Mortgage Company owned and held 40,000 shares of the Consolidated Credit [31] Corporation's Class A, no par stock, of a total value of \$120,000.00.

On or about said date, without any authority so to do, C. H. Farrington, then president and director of the Western Bond and Mortgage Company, and owner of approximately two-thirds of its common voting stock, and in control of said corporation, caused or permitted to be transferred out of said corporation and to a person or persons unknown, said 40,000 shares of said stock of the Consolidated Credit Corporation of the value of \$120,000.00.

Said Consolidated Credit Corporation's stock was transferred in purported consideration for all of the stock of a corporation known as the Keystone

Finance Company, but no such consideration was received for said stock since then and prior thereto the said stock of the Keystone Finance Company was already owned by the Western Bond and Mortgage Company.

Thus the Western Bond and Mortgage Company was defrauded by defendant, its president, director, and controlling stockholder, out of the value of said Consolidated Credit Corporation's stock, viz., the sum of \$120,000.00.

(Concerning Laches and the Statute of  
Limitations)

The plaintiff further contends that:

The enforcement of the above claims was timely sought in this court as soon as said facts on which they are based came to his knowledge, or by reasonable diligence could have come to his knowledge.

The facts on which such contention is made are:

Until a few weeks before the institution of this proceeding he had no knowledge or intimation of the particular transaction involving the Western Guaranty Company's stock (The First Claim), nor did he know or have any intimation of the particulars involving the disposal by the Western Bond and Mortgage Company of the 40,000 shares of Class A, no par value, stock of the Consolidated Credit Corporation (The Second Claim). [32]

The time, manner and circumstances under which he asserted knowledge concerning the facts above

set forth in his first and second claim herein were as follows:

The United States of America had filed a claim in bankruptcy for additional income taxes claimed to be due it by the Western Bond and Mortgage Company for the year 1930 in an amount which, with interest, exceeded \$50,000.00, and though such claim was filed by the United States of America in 1935, said claim was not pressed for hearing by the government until some time in the month of May, 1943, since no money in an amount sufficient to pay any appreciable portion of said claim came into the estate until slightly over a month before. Plaintiff, as Trustee, thereupon proceeded to investigate the claim asserted by the government for taxes so as to be able to file objections to same if such claim was subject to objections, and to contest the same at a hearing, if such claim were, in his opinion, improper. In order to obtain the data on which to make such objections and contest, the plaintiff, through his attorneys, made demand of the government of the United States, through its proper department, for a copy of the report of the agent on whose examination the additional tax assessment was made by the United States, since no copy of such report was found in the books, papers, and memoranda of the Western Bond and Mortgage Company turned over to him as trustee. On or about the 15th day of May, 1943, the United States Commissioner of Internal Revenue furnished to plaintiff's attorneys a copy of the revenue agent's revised report recommending additional assessment,

and on June 1, 1943, furnished to said attorneys copy of the revenue agent's original report. Upon reading said reports plaintiff became convinced that it would require the services of an accountant to delve into the facts of the situation touched upon in said reports, as well as into other matters which were pointed by such revenue agent's report, and accordingly he applied to the Referee in bankruptcy in charge of the bankruptcy estate for authority to employ a certified public accountant to make investigation [33] in regard to such matters and things. Authority was obtained from the Referee authorizing such employment. Plaintiff then employed as certified public accountant one Rudolph Erickson, and in due course of about two months, said certified public accountant informed him of matters on which objections to the claim of the government should be based, and likewise informed him of matters set up in the first and second claims set forth herein. Within a few weeks after said information was conveyed to him by said certified public accountant, and after causing examinations under Sec. 21-a of the Bankruptcy Act of various parties, he made further independent investigation and inquiries, and on or about the first day of October, 1943, having been convinced that fraud had been perpetrated herein, he made application to the referee in charge of the case for authority to institute suit against defendant herein, which authority was granted, and on the next day suit was instituted. Plaintiff had no knowledge or reason to believe of any delinquencies or improprie-

ties on the part of C. H. Farrington which would have led to a discovery of the facts set forth in plaintiff's first and second claims herein. He had a general knowledge that charges had been made and suits or actions brought both in the federal and state courts, against the Western Bond and Mortgage Company previous to his trusteeship herein in 1934, and that some charges in some of said suits or actions had been made against C. H. Farrington, but as to the nature and details of said charges plaintiff was not informed, nor did he have knowledge thereof, and plaintiff had a like general knowledge of the fact that several of the suits brought against the Western Bond and Mortgage Company and against said Farrington had been dismissed, though he did not know the specific charges which were made other than the fact that it was claimed that the Western Bond and Mortgage Company was insolvent and that a receivership of said company was being sought, nor did plaintiff have any further knowledge of such charges or of the facts set forth in his first and second claims herein until they were discovered by him in the manner herein above set forth. [34]

Thus, plaintiff brought suit within two years of the discovery of the fraud set forth in his first and second claims herein, and in fact brought suit speedily upon first discovery by him of such fraud, to-wit, in about thirty days thereafter.

## IV. CONTENTIONS OF DEFENDANT

Defendant denies all of the charges against him asserted by plaintiff, and contends that:

Defendant sold all of his stock in Western Bond and Mortgage Company on December 20, 1930, and thereafter had no participation whatever in the management of said corporation. That said corporation continued in active business under the control of its duly elected officers and directors until August 13, 1934, when plaintiff was appointed receiver thereof; that during said period defendant did not participate in any way in the operation or business of the said corporation.

During March, 1931, certain bondholders and stockholders of Western Bond and Mortgage Company caused one John Brockie, a stockholder of Western Bond and Mortgage Company, to file and the said Brockie did file in this court a suit wherein he made the same unfounded charges against this defendant as are made in this action by plaintiff and designated herein by plaintiff as claim No. 1 and other equally unfounded charges against this defendant were made in said Brockie suit general in their nature and not particularized.

Following the filing of said Brockie suit full publicity was given in the press of Portland and vicinity to said charges and at said time the plaintiff herein knew or should have known of said charges and that in any event the plaintiff had definite knowledge of the allegations in said suit not later than the year 1934.



Defendant answered said complaint in the Brockie suit giving full and accurate answer to all of the specific charges mentioned in said complaint, including the charges now made by the plaintiff and called by him his first claim, and other defendants in said suit likewise made full answer to said complaint. [35]

Defendant endeavored to get said case tried but against his vigorous opposition the plaintiff, Brockie, was permitted to discontinue said cause and dismiss said suit. That plaintiff knew or should have known at said time of the charges made in said suit and in any event had actual knowledge thereof not later than the year 1934.

At the time said case was pending in 1931 this defendant was in position to prove that all of his transactions with Western Bond and Mortgage Company were legitimate and that as to plaintiff's first claim that the assets transferred to Western Bond and Mortgage Company by Laurel Investment Company for the stock of Western Guaranty Company were of a value greatly in excess of the value of said Western Guaranty stock. That documentary evidence in support of said defense which was then in the files of Western Bond and Mortgage Company, but which the plaintiff asserts he is now unable to find, was then but is not now available and that witnesses who knew the facts were then living and now are dead.

On July 14, 1931, one H. C. Thompson and other bondholders and stockholders of Western Bond and

Mortgage Company filed a suit in the Circuit Court of the State of Oregon for Multnomah County against Western Bond and Mortgage Company and others, containing among other things the same charges against this defendant as are stated in plaintiff's first claim, and other general charges against this defendant, but this defendant was not made a party to said suit. Full publicity was given by the press of Portland and vicinity to the charges made against this defendant in said suit and the plaintiff herein knew or reasonably should have known thereof at the time and that he had definite knowledge thereof not later than the year 1934.

In September, 1931, a suit was brought in the Circuit Court of the State of Oregon for Multnomah County by Edward Pape and other bondholders and creditors of Western Bond and Mortgage Company against said Western Bond and Mortgage Company and others, which again reiterated the charges made against this defendant in the Brockie case, but again [36] this defendant was not made a party. Full publicity was given to the charges contained in said suit by the press of Portland and vicinity and the plaintiff herein knew or should have known thereof at the time, and in any event had definite knowledge thereof not later than the year 1934.

Various other actions and suits were brought against Western Bond and Mortgage Company during 1931, including an application made in November, 1931, by creditors of Western Bond and



Mortgage Company to have it adjudicated a bankrupt. These various lawsuits were publicized by the press and the plaintiff herein knew or should have known thereof at the time and in any event had definite knowledge thereof not later than the year 1934.

During the first half of 1934 the Corporation Department of the State of Oregon intervened in said bankruptcy and proceedings pending against Western Bond and Mortgage Company and an Assistant Attorney General and the District Attorney of Multnomah County investigated the affairs of Western Bond and Mortgage Company and conferred with attorneys representing the plaintiffs in the various suits heretofore referred to. At the instance of the Attorney General of Oregon this court appointed the present plaintiff receiver of Western Bond and Mortgage Company on August 13, 1934, and he immediately qualified by taking the necessary oath, and he was put in possession of all books, records and papers of Western Bond and Mortgage Company, and he has been in possession thereof ever since. That on December 12, 1934, Western Bond and Mortgage Company was adjudicated a bankrupt and the plaintiff herein was appointed trustee and since said date has been in possession of the books, records and papers of Western Bond and Mortgage Company as such trustee.

In March, 1935, plaintiff employed competent counsel to assist him and plaintiff and his said

counsel did or should have consulted auditors who had investigated the affairs of Western Bond and Mortgage Company for the various plaintiffs and for the Corporation Commissioner of Oregon, and plaintiff and his counsel did examine or should have [37] examined the books, papers and records of Western Bond and Mortgage Company, and did have or should have had as complete knowledge in the year 1935 of the affairs of Western Bond and Mortgage Company as they now have.

In June, 1936, plaintiff changed attorneys to his present counsel. In July, 1936, plaintiff secured the services of an accountant on a contingent fee basis. That said accountant did and does have offices with plaintiff's present counsel and is the same accountant as the one plaintiff now asserts he employed after June 1, 1943.

In April, 1937, plaintiff asked for and obtained approval of the Referee in Bankruptcy of a thirty-three and one-third per cent contingent fee agreement he had made with his present counsel to prosecute suits in various matters they had investigated with the aid of the accountant heretofore referred to.

Prior to July 1, 1936, plaintiff and his counsel had fully investigated the history of the Russell Ranch and of Keystone Finance Company and had prepared and filed documents alleging among other things that Western Bond and Mortgage Company was the owner of all stock of Keystone Finance Company, that said Keystone Finance Company

was a mere instrumentality of Western Bond and Mortgage Company, having no real corporate existence and seeking to recover the value of the Russell Ranch from the Bank of California, N. A.

Defendant contends that within a period of six months following his appointment as receiver and not later than one month after his appointment as trustee and in any event not later than July 1, 1935, plaintiff knew or in the exercise of reasonable diligence should have known all the facts relating to the actions of defendant as a director and president of Western Bond and Mortgage Company and his dealings with Western Bond and Mortgage Company in December, 1930, after he ceased to be a stockholder, director or officer of Western Bond and Mortgage Company. That plaintiff and his counsel had actual knowledge of the prior litigation and of the fact that numerous charges of misappropriation had been made against defendant [38] and were put on inquiry as to all of defendant's dealings and transactions with Western Bond and Mortgage Company and of all his actions while he was an officer and director of Western Bond and Mortgage Company.

Plaintiff is barred by the lapse of more than two years from the time plaintiff knew or should have known of the facts of the Western Guaranty transaction and of the fact that numerous other general charges had been made against defendant sufficient to put plaintiff on inquiry and that plaintiff is barred by the statute of limitations.

Plaintiff has been guilty of laches in failing to bring action while documentary evidence was available which is now no longer available, while witnesses who knew the facts were living who are now dead, and while the facts were within the memory of the witnesses still living.

## V. ISSUES OF FACT

The issues in dispute are :

(1) Did the acquisition from the Western Bond and Mortgage Company on or about December 20, 1930, of the stock of the Western Guaranty Company constitute a fraud on the part of the defendant for which recovery should lie, and if so, was Western Bond and Mortgage Company damaged thereby, and how much?

(2) Did plaintiff acquire actual knowledge of the facts on which plaintiff's first claim was based more than two years before this action was filed?

(3) Did the plaintiff, more than two years before this action was filed, acquire or should he have acquired knowledge or information which would have led him by the exercise of reasonable diligence to inquiry or investigation, and if said knowledge or information did or should have come to him and was or should have been pursued by him, would such pursuit have disclosed to him the facts on which plaintiff's first claim is based?

(4) Did defendant appropriate or is he chargeable with the appropriation or disposition of 40,-

000 shares of Class A no par value stock of the Consolidated Credit Corporation belonging to the Western Bond [39] and Mortgage Company, and if so, was the Western Bond and Mortgage Company damaged thereby, and how much?

(5) Did defendant acquire actual knowledge of the facts on which plaintiff's second claim was based more than two years before this action was filed?

(6) More than two years before this action was filed, did plaintiff acquire or should he have acquired knowledge or information which would have led him by the exercise of reasonable diligence to inquiry or investigation, and if such knowledge or information should have come to him and should have been pursued by him, should such pursuit have disclosed to him the facts on which plaintiff's second claim is based?

(7) If plaintiff is chargeable under Paragraph (3) or (6) with knowledge sufficient to bar the action on either his first or second claim, then would such knowledge so chargeable be sufficient to bar either or both of said claims?

## VI. ISSUES OF LAW

(1) Does the first claim of the complaint filed herein state a claim against the defendant?

(2) Does the second claim of the complaint filed herein state a claim against the defendant?

## VII. SEGREGATION OF ISSUES

In the interest of orderly proceeding and economy of time,

It Is Further Ordered that the issues raised herein be segregated and that the following issues be first tried and determined upon the facts, upon admissions, and upon the documents herein specified:

1. As to the first claim of plaintiff:

(a) Is the action barred by the Statute of Limitations or by plaintiff's laches?

(b) Did the plaintiff acquire actual knowledge of the transactions referred to in the plaintiff's first claim of the complaint more than two years before this action was filed? [40]

(c) Did plaintiff, more than two years before this action was filed, acquire or should he have acquired knowledge or information which would have led him by the exercise of reasonable diligence to inquiry or investigation and, if such knowledge or information would or should have come to him, and was or should have been pursued by him, should such pursuit have disclosed to him the facts on which plaintiff's first claim is based?

2. As to the second claim of plaintiff:

(a) Is this action barred by the Statute of Limitations or by plaintiff's laches?

(b) Did the plaintiff acquire actual knowledge



of the transactions referred to in the plaintiff's second claim of the complaint more than two years before the action was filed?

(c) Did the plaintiff, more than two years before this action was filed, acquire or should he have acquired knowledge or information which would have led him by the exercise of reasonable diligence to inquiry or investigation and, if such knowledge or information would or should have come to him and was or should have been pursued by him, should such pursuit have disclosed to him the facts on which plaintiff's second claim is based?

3. As to either or both claims of plaintiff:

If plaintiff is chargeable under Paragraph 1(c) or 2(c) above with knowledge sufficient to bar the action on either his first or second claim, then would such knowledge so chargeable be sufficient to bar action on the other claim?

It Is Further Ordered that, as to the other issues of fact and of law set forth herein, the same be subject to further pre-trial conference and that the determination of said other issues be postponed until further direction of this court.

Dated at Portland, Oregon, this 28th day of November, 1944.

JAMES ALGER FEE,  
Judge.

[Endorsed]: Filed November 28, 1944. [41]

[Title of District Court and Cause.]

### OPINION

This is an action by the trustee in bankruptcy of the Western Bond and Mortgage Company, a petition for the bankruptcy of which was filed November 24, 1931, in involuntary proceedings. The Western Bond and Mortgage Company was adjudicated on this petition September 24, 1934.

Certain transactions which occurred between the bankrupt and defendant Farrington who was an officer thereof are said to have transferred assets of that corporation to him without any consideration. These transactions are said by plaintiff to have occurred on the 20th day of December, 1930, as to the first "cause of action", and on the 12th day of December, 1929, as to the second "cause of action." They are alleged in the complaint to have been discovered on the 21st day of September, 1943.

McBride was appointed trustee of the Western Bond & Mortgage Company, bankrupt, on December 12, 1934. This action was commenced October 2, 1943. McBride is an attorney and has been chief of the estate tax department and of the income tax department of the United States Bureau of Internal Revenue. While so connected, he had some familiarity with the income tax liability of bankrupt and Farrington. He personally [42] heard some of the testimony at the trial of Farrington's case before the Board of Tax Appeals and was present at the taking of depositions of Brown and Besson in the bankruptcy court in 1931, which



transactions related to manipulations of the stock and property of the bankrupt.

Soon after his appointment as trustee, McBride was visited by Ralph Moody who was conducting an investigation of the affairs of bankrupt on behalf of the State Attorney General's office. From this source, McBride was paid a monthly sum for carrying on an investigation and furnished the services of two auditors. Latourette, attorney for McBride during this period, testified that strenuous efforts were made to investigate everyone who had been involved in the transactions resulting in bankruptcy, including Farrington. The newspapers carried accounts of the alleged civil and criminal liability of Farrington, some of which McBride had called to his attention, and there were many suits filed in court which contained positive allegations in relation thereto.

In 1935, McBride knew of a tax claim asserted by the Internal Revenue Department. He had known of the fact that there was an amended income tax return upon which, when he finally obtained a copy in 1943, he found bodied forth completely the foundation of this case. After he knew an income tax report existed, McBride called at the office of the agent of Internal Revenue but found no copy there. Sometime after this, he heard that Robert Jacob, an attorney, had a copy of this document. For three or four years after he had this knowledge, he made no effort to see the report. Finally, he called at Jacob's office. He found that

Jacob was out of the office and immediately abandoned all further effort. Thus he procrastinated for all these years in obtaining the copy although from his [43] experience in tax matters, he must have known that this document would have been invaluable in unwinding the tangled skein which he had in his hands. The whole theory of excusing the trustee for failure to bring this suit earlier is that the finding of this report and the amended return was the discovery of fraud.

In 1936, McBride employed Erickson, the present accountant, and about that time, present counsel were employed. Data was at hand pointing clearly to a loss of assets in another transaction. This was pursued with energy and ability by counsel for McBride both in this court, *In re Western Bond & Mortgage Company*, 44 F. Supp. 89, and in the Circuit Court of Appeals, *Bank of California National Association vs. McBride*, 132 F. 2d 469, with the result that there was a substantial recovery. The final opinion upon appeal was announced January 14, 1943. Thereafter, the energy theretofore concentrated on that case was transferred to this investigation with the result that the obvious means of obtaining the amended return were exercised and the alleged fraud was discovered.

The State Statute of Limitations in Oregon, on a fraud action, as this is, commences running from the date of the act and creates a bar within two

years, but provides that this period shall run only from discovery, either at law or in equity.<sup>1</sup>

In this case, the trustee is not suing to recover the property of the bankrupt in specie.<sup>2</sup> Nor is

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<sup>1</sup>Chapter 2, Title I, of the Oregon Statutes provides: “#1-201. Time of commencing actions: Objection, how taken. Actions at law shall only be commenced within the periods prescribed in this title, after the cause of action shall have accrued; \* \* \*

“#1-202. \* \* \* The periods prescribed in the preceding section for the commencement of actions, shall be as follows: \* \* \*

“#1-206. Within two years. Within two years— (1) \* \* \* for any injury to the person or rights of another, not arising on contract, and not herein especially enumerated; provided, that in an action at law based upon fraud or deceit, the limitation shall be deemed to commence only from the discovery of the fraud or deceit.”

“#9-103. A suit shall only be commenced within the time limited to commence an action as provided in Chap. 2, of Title I of this Code \* \* \*. In a suit upon a new promise, fraud or mistake, the limitation shall only be deemed to commence from the making of the new promise or the discovery of the fraud or mistake \* \* \*.” [44]

<sup>2</sup>Sections 70a and 70c are not antagonistic as contended by plaintiff. By Subsection (a) the trustee acquired all the rights which the bankrupt had in property which he had transferred in defraud of creditors. By the former section 47a(2) the trustee was given the rights of creditors as to all the property with which he became vested by virtue of the clauses of section 70. Under the act of 1938, all these provisions now become a part of section 70 and the causes of confusion no longer exist. (See 11 USCA #110, supp.)

it believed that this action is for injury or detention of the property of the bankrupt<sup>3</sup>. If a cause of action were given to the trustee by the Bankruptcy Act, the right would be generated by the terms of the enactment and would then fall within the two year limitation. The reasoning of *Herget vs. Central National Bank and Trust Company*, No. 322, October Term, 1944, January 29, 1945, . . . . . U. S. . . . ., would furnish an analogy. But if the cause of action is not given by the Act, as the better argument suggests, it must have been an inherited right. The cause of action is for fraudulently depriving the corporate bankrupt of certain property. Such a right can have a genesis in three ways in order for the trustee to inherit. First, a creditor of bankrupt might have rights against the person fraudulently obtaining such property.<sup>4</sup> Second, the bankrupt corporation itself might have a right against a person who fraudulently misappropriated its property. Finally, a stockholder might have a right of action for misappropriation, or breach of trust, by one of the officers of the corporation.<sup>5</sup> The court is of opinion that the present action is one derived from one of the above mentioned

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<sup>3</sup>"rights of action arising upon contracts, or usury, or the unlawful taking or detention of or injury to his property." Bankruptcy Act, §70a(6). A two year statute of limitations under the Oregon State Law would apply were the cause of action one for taking or detention of property.

<sup>4</sup>*Kane vs. Sesac*, 54 F. Supp. 853.

<sup>5</sup>See *In re Globe Drug Co.*, 9 Cir. 104 F. 2d 114.

sources. It does not take its initial genesis by virtue of the provisions of the Bankruptcy Act.<sup>6</sup>

Before the passage of the Act of 1938, it had been consistently held in the Ninth Circuit that to such an inherited cause of action the general statute of limitations prescribed by the particular state applied.<sup>7</sup> This was the more logical since it is a principle agreed upon with unanimity that where a right of action given by a particular state was conditioned in the same statute by a limitation, the expiration of the period thus set would bar the remedy, notwithstanding the language of the old clause 11d.<sup>8</sup> Universally the courts maintained that where the general law of the state had provided the right in a creditor, that if the law of the general limitation set up by the state had barred the remedy in the creditors, the trustee could not revive it.<sup>9</sup> This was founded upon the proposition that the trustee was enforcing a right based upon rights inherited from the bankrupt, or the creditors, and for which remedies were given by state law.<sup>10</sup> It

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<sup>6</sup>Cf. Section 60, Bankruptcy Act; 11 USCA §96; *Herget vs. Central National Bank & Trust Company*, *supra*. [45]

<sup>7</sup>*Davis vs. Willey*, 263 F. 588; *Davis vs. Willey*, 9 Cir. 275 F. 397.

<sup>8</sup>Bankruptcy Act of 1898, a 11d.

<sup>9</sup>See *Heffron vs. Duggins*, 9 Cir. 115 F. 2d 519; *Durrett vs. Harris*, 148 Arkansas 4, 228 S.W. 386; *Harrigan vs. Bergdol*, 270 U. S. 560.

<sup>10</sup>See *Davis vs. Willey*, *supra*; *Woodman vs. Butterfield*, 116 Maine 241; *Cobb vs. First National Bank*, 263 F. 1000; *First Presbyterian Church of Santa Barbara, Cal. vs. Rabbitt*, 118 F. 2d 732.

has been intimated that the former provisions of the Bankruptcy Act had no effect upon this situation since former section 11d was a withdrawal of juridicial and representative capacity.<sup>11</sup> Therefore, that section was not intended as a statute of limitations, but simply a termination of power. There were, it is true, cases holding that old section 11d was a true statute of limitations and if the remedy of a creditor were alive on the date of filing the petition, it lingered on available to the trustee until two years after final closing.<sup>12</sup> But practical considerations as well as authority constrain this court to the opposite view. Repose is the aim of those local statutes and the state policy should control. While then a case can be made for the retention of the remedy until a trustee could orient himself before bringing action, it should not be extended as in this case to thirteen years unless the affirmative policy of the state permit.

The state statute as above noted erected the bar of limitations against the remedies here sought sometime in 1933, unless the fraud was not discovered until later. But the trustee here had knowledge of facts sufficient to lead him to make the

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<sup>11</sup>See *Nairn vs. McCarthy*, 9 Cir. 120 F. 2d 910, where it is said: "It does not follow from the fact that the trustee is prohibited from bringing an action subsequent to that time that he is authorized to maintain an action prior thereto, irrespective of an applicable limitation statute." [46]

<sup>12</sup>*Isaacs vs. Neece*, 5 Cir. 75 F. 2d 566; *Engelbreton vs. West*, 133 Nebraska 846; 277 N.W. 433; *Callaghan vs. Bailey*, 293 N.Y. 396.



allegations presented here, soon after he assumed responsibility<sup>13</sup> for the management of the estate. Farrington bulked large in the rumors of fraudulent dealings with bankrupt in the whole period after the filing of the petition and covering the time of the initial incumbency of the trustee. The associates of the trustee indicate knowledge of it. The press accounts, at least one of which was specifically brought to the attention of the trustee himself, are full of such suspicions. There was litigation of record which pointed to these very transactions. All the records of the bankrupt were placed in the trustee's hands and he had some assistance and sufficient money to make an investigation of them. The mere fact that the trustee did not have the specific document, an amended income tax report for the year 1930, now considered to furnish conclusive proof, is immaterial. There was data on hand from which he should have taken warning of the essentials. The information was within the knowledge of the trustee before 1936, by construction. Such knowledge must be attributed to the trustee and his attorneys in that year which saw the first vigorous attempts to follow up the claim against the Bank of California. But two years had expired after these events before the Chandler Act took effect. Their action was barred then, by the Oregon statute, before the new act became effective.

Logically the opinion should stop here, but the

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<sup>13</sup>*Linebaugh vs. Portland Mortgage Co.*, 116 Ore. 1, 13, 14; Cf. *Sedlak vs. Sedlak*, 14 Ore. 540. [47]



arguments have wandered far afield. In order to save question, the court now considers the situations which would have arisen if knowledge had been obtained by the trustee at a later date.

If it be assumed that knowledge had not been obtained by the trustee by the date of the taking effect of the amendment to the bankruptcy law, in 1938, the two years after adjudication had already passed so that the particular clause of the statute gives no aid. But the state statute might give two years more vicariously. The court holds that the knowledge of facts which the trustee had during these two years was sufficient to guide him to an actual knowledge of the matters now alleged. Therefore, two years from the effective date of the Chandler Act barred the right of action completely. The question as to construction, if this action had been filed within two years from the effective date of the amendatory act, might have been puzzling, but that cannot arise now.

The Act of 1938 changed the whole situation with regard to limitations under the bankruptcy act. The conflict between the courts regarding the interpretation of the old section 11d was "primarily responsible for the framing of the new Section 11e in 1938."<sup>14</sup> The new section 11e was obviously a compromise and extended the limitations laid down by the state statutes under the interpretation of *Davis vs. Willey*, *supra*, to a fixed period of two

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<sup>14</sup>*Herget vs. Central National Bank & Trust Co.*, *supra*. [48]

years beyond the date of adjudication. It will be noted, however, that if the state statute had barred the action before the filing of the petition in bankruptcy, or if the state statute provided for a term of limitation which did not lapse until two years after adjudication, then no change was effected where the doctrines previously announced by the Ninth Circuit Court of Appeals continue in effect.<sup>15</sup> The purpose of the new act seems unquestionably to be to extend to the trustee a fixed period within which he might file all suits which he has inherited from the debtor unless it were the policy of the particular state to give him even a longer time.<sup>16</sup> Section 6 of the Bankruptcy Act of 1938, 11 U. S. C. A. §1, note, provides in part:

“Except as otherwise provided in this amendatory Act, the provisions of this amendatory Act shall govern proceedings as far as practicable in cases pending when it takes effect; but proceedings

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<sup>15</sup>In *Hastings vs. H. M. Byllesby & Co.*, 293 N.Y. 413, 57 N.E. 2d 537, the court cites and follows *Callaghan vs. Bailey*, *supra*, and thus comes to the conclusion that a diminution rather than an extension of the period of limitation was effected by new Section 11e of the bankruptcy act. From this premise the court arrives at the conclusion that it is not practicable to apply the new section of the Chandler Act. Although the reasoning of this distinguished court is persuasive, it is not binding here. The opinion simply means that in the state courts of New York a longer period of limitation will be applied. A court bound by *Davis vs. Willey*, *supra*, must necessarily reach a contrary conclusion.

<sup>16</sup>Cf. *Herget vs. Central National Bank & Trust Co.*, *supra*. [49]

in cases then pending to which the provisions of this amendatory Act are not applicable shall be disposed of conformably to the provisions of said Act approved July 1, 1898, and the Acts amendatory thereof and supplementary thereto.”

Inasmuch as the limitation clause is an extension rather than a diminution of the time allowed to the trustee for filing a cause which he has inherited from the bankrupt, it is practicable to apply new section 11e in this case. According to the determinations which the court has heretofore made upon the facts, the state statute already had run before the Chandler Act was enacted. Thus we are brought back to the same situation. It was practicable to apply the Chandler Act and to give effect to the state statute of limitations by the court as already found. Based on the facts, the remedy is barred.

Entirely irrespective of the limitations, state or federal, in a court of bankruptcy which is controlled by equitable principles, it would seem that the doctrine of laches was applicable.<sup>17</sup> It has, in fact, been applied in state courts under similar circumstances.<sup>18</sup> Even if we assume all of the allegations of plaintiff's complaint to be true, it still must be remembered that these actions were consum-

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<sup>17</sup>See *Wilkinson vs. Livingston*, 8 Cir. 45 F. 2d. 465.

<sup>18</sup>*Wolpert vs. Gripton*, 213 Cal. 474, 2 F. 2d 767; Cf. *Bovay vs. H. M. Byllesby & Co.* (Del. Ch. 1940) 22 A. 2d 138; also *Fredericks vs. Jacoby*, 128 N.Y. Eq. 426, 16 A. 2d 809.

mated in 1929 and 1930, approximately fifteen years ago; that the filing of the petition in bankruptcy was in 1931; that extensive investigations were made at that time; and that the main actors in the transactions with the exception of defendant, are dead, as well as others who have known material facts.<sup>19</sup> This court has allowed recovery upon another one of the major claims and this determination was affirmed by the Circuit Court of Appeals and the property has now been recovered. The right of recovery in that case was not nearly so clear at the outset as it appears now when opinions are on record, but after all, it represented even at that time, by far the best chance of upsetting a fraudulent transaction and obtaining money for this estate. The trustee and the present attorneys have devoted years of unflagging zeal to obtaining recoveries in that case, but it is the opinion of the court that they deliberately spent their work and efforts upon that proposition as the main chance and that they did not as vigorously pursue the clues that might have lead to a like recovery in the instant cause. There were sufficient facts of record long ago to have accomplished this purpose. All they had to do was to obtain the income tax return which they now have, and it was available to them at all times. Laches is not established by the lapse of time alone, but here there is detriment to the defendant in that he has been robbed of a means of defense by the death of witnesses and partici-

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<sup>19</sup>*Wilkinson vs. Livingston, supra*; Cf. *Bingaman vs. Commonwealth Trust Co.*, 15 F. 2d 119. [50]

pants, and on the other hand it is apparent to the court that there was a more or less deliberate choice in pursuing the other claim rather than this one. Whether these circumstances be used to create a bar by reason of laches, or to make plain that it is "practicable" to apply the provisions of the limitations in the Act of 1938, the result is impregnably established thereby. A bar to prosecution of these claims is now complete.

Findings and judgment of dismissal may be prepared.

Endorsed: Filed April 18, 1945. [51]

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above cause came on for hearing before the Hon. James Alger Fee, Judge of the above Court, without a jury, on November 28, 1944, plaintiff appearing in person and by Sidney Teiser, one of his attorneys, and defendant appearing in person and by John F. Reilly and Stephen E. Parker, his attorneys, and the parties having theretofore agreed upon a pre-trial order and an order segregating the issues between the parties and said pre-trial order and order segregating the issues having been signed by the court, this cause was tried on the issues of the statute of limitations and laches and the parties having submitted evidence in sup-

port of their respective contentions and argued and submitted the matter to the Court, the Court now makes the following

## FINDINGS OF FACT

### I.

The transactions referred to in the complaint herein and the pre-trial order are alleged to have occurred in December, 1929 and December, 1930.

### II.

Plaintiff was appointed trustee in bankruptcy of Western [52] Bond and Mortgage Co. on December 12, 1934, and all of the records of said corporation were promptly placed in his hands, including a litigation record pointing to the transactions on which plaintiff bases his claims against defendant.

### III.

Prior to 1936 plaintiff had actual knowledge or was in possession of information which was sufficient to guide him to actual knowledge of the matters alleged in the complaint.

### IV.

Plaintiff failed to pursue with reasonable diligence the information which had come into his possession prior to 1936 and which pointed to the transactions referred to in the complaint.

### V.

This action was commenced on October 2, 1943.

## VI.

Prior to the bringing of this action participants in the transactions referred to in the complaint and others who had known the material facts had died and defendant was deprived of a means of defense through their evidence.

Based on the foregoing Findings of Fact the Court now makes the following

## CONCLUSIONS OF LAW

## I.

This action is barred by the provisions of Oregon Compiled Laws Annotated Sections 1-201 to 1-206 and Section 9-103.

## II.

This action is barred by the laches of the plaintiff.

## III.

Defendant is entitled to a judgment of dismissal with costs. Dated this 28th day of April, 1945.

JAMES ALGER FEE

District Judge

[Endorsed]: Filed April 28, 1945. [53]



In the District Court of the United States for the  
District of Oregon

Civil No. 2202

GEORGE M. McBRIDE, Trustee in Bankruptcy  
of Western Bond and Mortgage Co., an Ore-  
gon corporation, Bankrupt,

Plaintiff

v.

C. H. FARRINGTON,

Defendant.

### JUDGMENT OF DISMISSAL

The above cause came on for hearing before the Hon. James Alger Fee, Judge of the above Court, without a jury, on November 28, 1944, plaintiff appearing in person and by Sidney Teiser, one of his attorneys, and defendant appearing in person and by John F. Reilly and Stephen E. Parker, his attorneys, and the parties having theretofore agreed upon a pre-trial order and an order segregating the issues between the parties and said pre-trial order and order segregating the issues having been signed by the court, this cause was tried on the issues of the statute of limitations and laches and the parties having submitted evidence in support of their respective contentions and argued and submitted the matter to the Court, and the Court having heretofore filed its Findings of Fact and Conclusions of Law herein,

Now Therefore, based on said Findings of Fact and Conclusions of Law,

It Is Ordered and Adjudged that this action be and the same is hereby dismissed with prejudice and that defendant have and recover from plaintiff his costs and disbursements herein.

Dated this 28th day of April, 1945.

JAMES ALGER FEE

Judge.

[Endorsed]: Filed April 28, 1945. [54]

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Notice Is Hereby Given that George M. McBride, Trustee in Bankruptcy of Western Bond and Mortgage Company, an Oregon Corporation, Bankrupt, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from a Judgment of Dismissal entered in this action on the 28th day of April, 1945.

TEISER & KELLER

SIDNEY TEISER

Attorneys for Appellant

[Endorsed]: Filed May 28, 1945. [55]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL

Plaintiff and Appellant hereby designates the following papers, documents and transcripts as the records proceedings and evidence to be contained in the record on appeal, being the entire record herein:

1. Complaint
2. Motion (to Dismiss and to make more Definite and Certain)
3. Order upon above motion
4. Answer
5. Pre-trial Order and Order Segregating Issues
6. Transcript of Testimony and Proceedings, including exhibits introduced, Nov. 28-29. Dec. 6, 1944.
7. Opinion
8. Findings of Fact and Conclusions of Law
9. Judgment of Dismissal
10. Notice of Appeal
11. This Designation of Contents of Record on Appeal
12. Order to send original exhibits.

TEISER & KELLER

SIDNEY TEISER

Attorney for Plaintiff and  
Appellant

United States of America

State of Oregon

County of Multnomah

Due service of the within designation hereby accepted in Multnomah County, Oregon, by receiving a copy thereof duly certified.

JOHN F. REILLY

Attorney for Defendant

May 31, 1945.

[Endorsed]: Filed May 31, 1945. [56]

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[Title of District Court and Cause.]

DEFENDANT'S DESIGNATION OF ADDITIONAL PORTIONS OF RECORD TO BE INCLUDED IN RECORD ON APPEAL

Defendant and respondent hereby designates the following additional portions of the record, proceedings and evidence to be included in the record on appeal:

- (1) All exhibits received or offered on the trial.
- (2) All of the proceedings on the hearing held March 30, 1945.
- (3) Bond on appeal, if any.

(4) Statement by appellant of the points on which he intends to rely.

/s/ CARL E. DAVIDSON

/s/ JOHN F. REILLY

Attorneys for Defendant and  
Respondent.

[Endorsed]: Filed June 6, 1945. [57]

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[Title of District Court and Cause.]

### ORDER

This cause having come on this day to be heard upon the motion of plaintiff for an order directing that the original exhibits be sent to the appellate court in lieu of copies, and it appearing to the court that a Notice of Appeal has been filed herein, and the court being of the opinion that the appellate court should have the original exhibits for inspection on such appeal:

It Is Ordered that all the original exhibits offered or received in evidence in this court be sent by the clerk of this court to the Circuit Court of Appeals for the Ninth Circuit in lieu of copies thereof, and

It Is Further Ordered that the sending of said originals in lieu of copies shall in no way be construed to indicate which of said exhibits shall or

shall not be printed in the printed Transcript of Record on Appeal.

Dated this 27th day of July, 1945.

JAMES ALGER FEE

Judge

O. K. JOHN F. REILLY.

[Endorsed]: Filed July 27, 1945. [58]

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CERTIFICATE OF CLERK

United States of America,  
District of Oregon—ss:

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered 1 to        inclusive, constitute the transcript of record on appeal from a judgment of said court in a cause therein numbered Civil 2202, in which George M. McBride, Trustee in Bankruptcy of Western Bond and Mortgage Company, an Oregon Corporation, Bankrupt, is plaintiff and appellant, and C. H. Farrington is defendant and appellee; that the said transcript has been prepared by me in accordance with the designations of contents of the record on appeal filed by the appellant and the appellee, and in accordance with the rules of this court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and pro-

ceedings had in said court in said cause, in accordance with the said designations as the same appear of record and on file at my office and in my custody.

I am also enclosing herewith duplicate transcript of testimony and proceedings of November 28, 29 and December 4, 1944, and duplicate transcript of proceedings of March 30, 1945, together with exhibits 59, 60, 62 to 67, 69 to 73, 75, 76, 78 to 104, 106 to 112, 155 to 158, 160 and 162. Also pre-trial exhibit 77.

I further certify that the cost of comparing and certifying the within transcript is \$38.05 and that the same has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 30th day of July, 1945.

[Seal]

LOWELL MUNDORFF,  
Clerk.

By F. L. BUCK  
Chief Deputy. [59]



[Title of District Court and Cause.]

TRANSCRIPT OF TESTIMONY

Portland, Oregon,  
November 28, 1944,  
10:00 o'clock A. M.

Before:

Honorable JAMES ALGER, FEE, Judge

Appearances:

Messrs. TEISER & KELLER (by Mr. Sidney  
Teiser), Attorneys for Plaintiff.

Messrs. REILLY & DAVIDSON (by Mr.  
John F. Reilly and Stephen E. Parker),  
Attorneys for Plaintiff.

Court Reporter:

IRA G. HOLCOMB.

PROCEEDINGS

The Court: Although I am somewhat familiar with the pre-trial order, I assume we should now, just on the eve of [1\*] trial, make up our minds as to whether there is anything further that should be done. Are both parties satisfied now with the pre-trial order?

Mr. Reilly: The defendant is satisfied.

Mr. Teiser: We are satisfied, sir.

The Court: You may then proceed. The Court will sign the pre-trial order at this time and place it of record.

Mr. Teiser: If your Honor please, I take it that it is not necessary to make any preliminary state-

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\*Page numbering appearing at top of page of original Reporter's Transcript.

ment at this time, as we have made our preliminary statements heretofore.

The Court: Yes.

Mr. Teiser: Under the provisions of the pre-trial order, we are now, according to my understanding, to engage only in the question as to whether or not the Trustee is bringing the suit within the time permitted by law or has, by laches, been precluded from bringing the suit.

The Court: As I understand, that is the first issue.

Mr. Teiser: Mr. McBride, will you take the stand, please?

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GEORGE M. McBRIDE,

the plaintiff herein, was thereupon produced as a witness in his own behalf and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Teiser:

Q. Your name is George M. McBride? [2]

A. Yes.

Mr. Teiser: If your Honor please, for the purpose of clarity, I might call attention to the fact that it is one of the agreed facts that Mr. McBride is the regularly qualified and acting Trustee in Bankruptcy of the Western Bond and Mortgage Company, and is now acting in that capacity.

The Court: Yes.

(Testimony of George M. McBride.)

Q. You are the George M. McBride who is the Trustee in this case?      A. Yes sir.

Q. What is your occupation, or, what was your occupation at the time of your appointment as Receiver and Trustee?      A. I was an attorney.

Q. An attorney?      A. An attorney at law.

Q. Are you still engaged in the practice of law?

A. No.

Q. What is your occupation now?

A. I work for one of the shipbuilding companies.

Q. When did you first obtain any knowledge of controversies existing between the Western Bond and Mortgage Company and its bondholders, or creditors, or anyone else?

A. Well, at the time of my appointment as Trustee. That was in 1934.

Q. Trustee or receiver? [3]

A. No, it was receiver. I was appointed receiver on August 13, 1934.

Q. When was information brought to you, and how, that you were appointed receiver: Tell how you happened to be appointed receiver and when you got that information.

A. Well, I was appointed receiver by Judge McNary. I had no previous business connected with the Western Bond and Mortgage Company. In fact, I knew nothing about its affairs; had paid no attention to it as a corporation; and the first notice I had of it was the Judge called me on the phone and told me he had appointed me receiver

(Testimony of George M. McBride.)

of the Western Bond and Mortgage Company and, shortly after that, on the same day, Mr. Moody came to my office and also told me that I had been appointed.

Q. You made no effort to be appointed, did you, or was that the first——

A. I had made no effort to be appointed to that job whatever.

Q. And you had no information of it until, as I understand, you were given that information by Mr. Moody, that the Judge had appointed you, is that right?      A. Yes.

The Court: Just a moment. That is inconsistent. He has just already said that the Judge called him first, as I understand it. Is that correct?

The Witness: The Judge called me and said he had appointed me. [4]

The Court: That was before you talked to Mr. Moody?

The Witness: Yes, Mr. Moody talked to me just a little while later, a little while afterwards. He came from the court, as I recollect it, down to my office and told me.

The Court: I do not think it is material, but you let him answer the other way.

Mr. Teiser: I misunderstood.

Q. How long did you act as receiver?

A. From the date of my appointment, August 13, until, I think, about the 12th of December.

(Testimony of George M. McBride.)

Q. What happened on the 12th of December that caused you to cease acting as receiver?

A. Well, I was appointed as Trustee in Bankruptcy.

Q. What did you do as receiver? During this period between August 13 and December 12, what did you do as receiver?

A. Well, I looked at the property, what I could find. I was largely familiarizing myself with the property and with the contents of the office and the books, that is, the regular books of the Western Bond.

Q. I may ask you: when did you first get any information of the facts or the claims set forth in your action in this court in this present action, Civil Case No. 2202? When did you first have any intimation of the facts set forth in your complaint?

A. Well, I believe about July or August, 1943.

Q. How do you fix that date in your mind? Did anything occur at that time that fixes that date in your mind?

A. Well, we were looking up the facts relative to the claims of the Income Tax Department along in the summer and we had—had employed Mr. Erickson as accountant to go into the matters relative to that claim and make an exhaustive accounting of the facts so that we might know how to meet the claim of the Government as to income tax.

Q. Do you remember offhand how much it was,

(Testimony of George M. McBride.)

roughly, in round numbers? How much was the claim of the Government?

A. The claim of the Government was originally about \$51,000 and there was accrued interest by reason of the running of the claim.

Q. What did you do in regard to assisting Mr. Erickson in ascertaining the facts in regard to these tax matters?

A. We employed Mr. Erickson under orders of the Referee to go into the matter, and he had been given access to the books and told to make an exhaustive search.

Q. What came to us about that time, if anything?

Mr. Reilly: Who do you mean by "us"?

Mr. Teiser: The Trustee. I am talking about the attorney and Trustee.

Mr. Reilly: I object to his testifying about anything that came to anyone excepting he himself.

Mr. Teiser: All right. [6]

Q. What information did you get, and from what source did you get it, in aid of Mr. Erickson?

A. Well, Mr. Erickson, in going over the matters of the income tax, had found facts which—

Mr. Reilly: Just a moment, if the Court please. I object to the statement as to what Mr. Erickson found, as hearsay.

The Court: Just testify to what you know.

Q. Just tell what information you obtained and where you obtained it from, if you obtained any-

(Testimony of George M. McBride.)

thing in regard to determining the situation as to income tax.

A. Well, what I obtained was facts relative to the income tax matters, which showed me or at least——

Q. Just a minute. Did you obtain any document from anybody or any report from anyone at that time in connection with this matter?

A. Well, we had a report, of course we got a report from the income tax people, from the revenue agents.

Q. That is what I was trying to find out.

A. And that report, of course, was a report that they—they had made an investigation back in 1930. I had never seen that report up to that time.

Q. Then, you did get a report?

Mr. Teiser: Have you got those statements?

Mr. Reilly: No, Mr. Parker is out there checking them for you. [7]

Mr. Treiser: If your Honor please, there is a pre-trial exhibit, which is the report that he refers to, that I would like to introduce, or have him identify it, but these documents are in the Clerk's office. We had withdrawn the exhibits and I turned them over to Mr. Reilly, and Mr. Reilly's assistant is back there checking them off.

Mr. Reilly: I think there was probably a misunderstanding between us. Mr. Teiser took the exhibits out, receipting for them, and then turned them over to me. He understood I was to check them. The result is, they were not checked and we



(Testimony of George M. McBride.)

are having them checked with the Clerk at this moment. I think they ought to be checked now. May I be excused to run in there?

The Court: Take a recess and let us get the case ready for trial.

Mr. Teiser: I am sure we are ready for trial, your Honor.

The Court: I do not know anything about that. This has gone through to a pre-trial order, and that is what a pre-trial order is for, to get these documents in shape so they can be introduced without any delay. Here, it is not done, so the Court will take a recess.

(Recess.)

Q. Mr. McBride, will you look at the paper I am now handing you, through the courtesy of the bailiff, plaintiff's Pre-Trial Exhibit No. 59, and state whether that is a copy of the revenue [8] agent's report that you have stated you received sometime around June, 1943?

A. Yes, that is the copy of the revenue agent's report.

Q. Is that the one you received, sir?

A. Yes.

Mr. Teiser: I ask that that be marked as plaintiff's—shall we keep the same numbers, your Honor?

The Court: Yes.

Mr. Teiser: I ask that that be marked as plaintiff's exhibit 59, or is it 69?

Mr. Reilly: 59. The defendant objects to the

(Testimony of George M. McBride.)

introduction in evidence of this exhibit, insofar as it is offered as proving or tending to prove any of the statements therein contained, or for any purpose, except the limited purpose of explaining or tending to explain the excuse offered by the plaintiff for having delayed the bringing of the action so long. For that purpose I consider it material, but not for any other purpose.

The Court: Admitted.

Mr. Reilly: For which purpose, your Honor?

The Court: Well, what use I will make of it after it gets in evidence, I do not know. I cannot try to exclude other matters from my mind, so I am going to admit it. Take what exceptions you feel you should, but I cannot read a document for a special purpose, as far as I know.

Mr. Reilly: I think with the statement the Court makes that we should object to admitting the document at all, on the [9] ground that it is an unsworn statement made by a third person, outside the knowledge of this witness.

The Court: The document is admitted, and the Court is not going to pass any judgment on hearsay, as you well know, but it is admitted for all competent purposes.

(Copy of letter dated May 27, 1943 from Treasury Department, Washington, D. C., to Collector of Internal Revenue, Portland, Oregon, heretofore marked plaintiff's Pre-Trial Exhibit No. 59, was thereupon received in evidence and marked Plaintiff's Exhibit No. 59.)

(Testimony of George M. McBride.)

Q. Why was it you did not happen to get that, or a copy of that report, or see a copy of that report previous to the time you did receive it, and how was it you happened to receive it then?

A. They filed their claim sometime in 1935.

Q. Who is "they"?

A. The revenue agent of the Income Tax Department.

Q. United States Government?

A. Yes. They filed their claim sometime in 1935. At that time, or shortly after the filing of the claim, I went up to Mr. Cannon's office, who was then Referee, with this and we discussed the matter of making objections to the claim at that time.

Q. That is, the Government's lien? [10]

A. Yes, but Mr. Cannon——

Mr. Reilly: Just a moment, please. The defendant objects to any conversation between the witness and Mr. Cannon, or any instructions from Mr. Cannon, because, first, it is hearsay and, secondly, it would afford no excuse for any failure on his part to perform his duties as Trustee.

The Court: Well, I have to find out why he did not take action before 1943. The only way I can find that out is to listen to what he did. If he got information from somebody else that prevented him from finding out, still that would be competent if he did not find out. You may proceed.

Mr. Reilly: Exception, your Honor?

The Court: Yes.

(Testimony of George M. McBride.)

A. Mr. Cannon, as Referee, stated that we had no money at that time.

Q. Pardon me. Did you say what we attempted to do when we went up to Mr. Cannon's office? Did you say what was attempted to be done by us when we went up there? What was our purpose in going there?

A. We went up there for the purpose of contesting the Government's claim. Mr. Cannon stated that there was no reason at that time to contest the claim, for we had no money to pay any claim at that time and it was merely—would be merely a gesture, and he considered it better to put the matter off until we had something to pay a claim with, as the whole matter [11] would probably have to be threshed out later on, so he did not allow the filing of a contest at that time.

Q. Were those his instructions to you?

A. That was his instructions to me.

Q. And when did you file a contest or objections to the claim of the Government? A. In 1943.

Q. How was that time measured in regard to the time when you had money with which to do it, to pay it or pay any substantial part of it?

A. I do not understand the question.

Q. I say: you say that you filed objections to the claim of the Government in 1943?

A. Yes.

Q. I ask you, then, when you filed objections to the claim in 1943, what relation did that time have

(Testimony of George M. McBride.)

as to whether you had any money in the estate to pay the claim?

A. We had received a large amount of money, approximately \$94,500, from the Bank of California in our suit against the bank, and the Government, knowing that we had——

Q. When was that? What year was that that you received that money?

A. Well, we received that money—that was early in—sometime early in 1943 or sometime in 1943, I cannot remember the exact date. [12]

Q. After you received that money, did you then file, as I understand, an objection to the claim of the Federal Government for taxes?

A. We did file an objection after we had investigated it, had an accountant investigate the matter, we filed our objection to the Government's claim.

Q. When did you start that investigation on which to base the filing of objections, compared to the time you received this money from the Bank of California?

A. Well, it was a few months. I could not say just how long, but it was within, anyway, five or six months, I would think. My recollection is a little hazy as to the exact time.

Q. Was it around the time that you received this money that you began investigating as to filing objections to the claim of the Government for taxes?

A. Yes, it was shortly afterwards.

Q. What did you do then in regard to formulating your objections as to the Government's claim

(Testimony of George M. McBride.)

at that time, in addition to getting this report from the revenue agent that you have just testified to? I think you have already testified to some of it, Mr. McBride. Maybe that is why you are puzzled. I think you have stated what you did previously, but I am asking you again so as to get the sequence of time.

A. Well, we filed a contest against the Government's claim before the Court—before the Referee. [13]

Q. What information did you have and how did you get the information on which to base the filing of that claim?

A. Well, we had, as I stated before, hired Mr. Erickson to make an exhaustive search of the records.

Q. Who is Mr. Erickson? What position did Mr. Erickson hold? What is his business?

A. He is an auditor and accountant, a certified public accountant.

Q. Did you or did you not give Mr. Erickson this revenue agent's report? A. Yes.

Q. In connection with this?

A. Gave him the report.

Q. When did Mr. Erickson report to you? About what time did he make a report to you of his examination?

A. It was along about the latter part of July, if my recollection serves me.

Q. What did he report to you in connection

(Testimony of George M. McBride.)

with the matters which you have set forth in your complaint as claims 1 and 2?

Mr. Reilly: That is objected to as hearsay.

Mr. Teiser: Pardon me. I think you are right. I will withdraw my question.

Q. Did or did he not give you the first—was or was not the first information conveyed to you in regard to those claims as set forth in your cause of action given to you by Mr. [14] Erickson?

A. Yes.

Q. What did you do when he informed you of the facts set forth which caused you to bring this action? What did you do before bringing the action, if anything, or what was done on your behalf?

A. Well, I had Mr. Erickson make an exhaustive audit of such books as appeared to him necessary to establish the action if the facts appeared to warrant it.

Q. Was any examination made of any parties, in court or otherwise, pursuant to the discovery of information by you? A. Yes.

Q. Could you state just the nature of this examination, or what it was?

Mr. Reilly: That is objected to as calling for a conclusion of the witness. He may state the name—

Mr. Teiser: That is what I mean, just the character of the examination.

Q. Was it in court? Was it a deposition, or just what was it?



(Testimony of George M. McBride.)

A. Well, it was before the Bankruptcy Court in the matter of bringing the facts out.

Q. How soon after you discovered this information from Mr. Erickson and had the examination conducted in the Bankruptcy Court did you bring this action?

A. Well, it was in, I think, about a month or two at the most. [15]

Q. Did you inspect the books and records of the Western Bond and Mortgage Company in 1934, or any time thereafter, you, yourself?

A. I inspected some of the books. We had probably three or four tons of records altogether in the files down in the basement, but the main books of the Western Bond and Mortgage Company I inspected.

Q. From such inspection, did you get any information of the situation set forth in your complaint?      A. No, I did not.

Q. Had you any information from any source, previous to that obtained from the revenue agent's report, and from your certified public accountant, and from the examination in the Bankruptcy Court? Had you obtained any information from any source other than that?      A. No.

Q. Or earlier than that?      A. No.

Q. In regard to this suit?      A. No.

Q. Did you?      A. I had not, no.

Mr. Teiser: I think that is all.

(Testimony of George M. McBride.)

Cross Examination

By Mr. Reilly: [16]

Q. How old are you, Mr. McBride?

A. What is that?

Q. How old are you? A. Sixty-eight.

Q. How long have you lived in Oregon?

A. About sixty-six years altogether.

Q. Do those sixty-six years include from about 1900 to date? From 1900 to date? A. Yes.

Q. How long have you lived in the City of Portland? A. About thirty-six years.

Q. Continuously to date? A. Yes.

Q. In other words, I mean your residence has been constant? A. Yes.

Q. For the last thirty-six years or so?

A. Yes.

Q. What was your occupation in the 1920's?

A. Well, I was in the Internal Revenue office during the latter '20's, from 1923.

Q. Until when? A. Until 1933.

Q. 1923 to 1933? A. Yes.

Q. What were you doing in the Internal Revenue office? [17]

A. Well, I was chief of the division of the estate tax department for quite some time. part of that time, and I was chief of division of the income tax department for the last five or six years.

Q. Then, for the last five or six years preceding 1933 you were chief of the income tax division of the United States Internal Revenue office at Portland? A. Yes.

(Testimony of George M. McBride.)

Q. That, I assume, necessarily involved a considerable knowledge of accounting?

A. Yes. It involved some knowledge of accounting, enough to read a balance sheet and to know the revenue laws.

Q. And enough so that you could understand a set of books?

A. Well, it was enough so I could understand some books, but I was not at all to be rated with a certified public accountant.

Q. However, you were acquainted with the revenue laws; you knew that a claim had to be presented within a certain time, and that an objection to a tax had to be presented within a certain time after notice of the tax was levied?

Mr. Teiser: I object to that. It is not a correct statement of the law and I do not see——

The Court: Overruled.

Q. During the time that you were chief of the income tax division here in Portland, did you have to do with the claim of the Government against the defendant herein for taxes for [18] the year 1929, where the Government undertook to collect, for Western Bond transactions some \$150,000?

A. No. I had nothing to do with that end of it at all. That was all handled by the revenue agent's department, from the Commission's office in Washington. We had nothing to do with that part of it.

Q. You knew of the fact of the claim?

A. No, I did not know of the facts of the claim. I just had what you might call a gossip knowledge

(Testimony of George M. McBride.)

of it, but I had nothing to do with the facts of the claim directly.

Q. The subject of the possible liability of Mr. Farrington for income tax was considerably gossiped about in your office?

A. Well, yes, some of it may have been.

Q. Some of the members of your office later offered testimony in the case before the Board of Tax Appeals?

Mr. Teiser: What time are you speaking about, Mr. Reilly?

The Witness: I do not recollect any such thing.

The Court: Let the witness answer. Don't you try to answer for him.

The Witness: I did not know of any such thing.

Q. But you knew, in any event, the Government, prior to 1934, was making a claim against Mr. Farrington, charging him with fraud in some of his Western Bond transactions, fraud on the Government?

A. The only knowledge I had was an occasion of some kind when [19] Mr. Farrington got the books, some of the Western Bond books, from me, and there was an action either against Mr. Farrington or Mr. Ridgway, I am not certain which, and I gave them the books, but kept custody of them until we got up to the court house and until they had been introduced in evidence or at least taken charge of by the Court. During that time, I sat there and listened to some of the testimony for awhile and then went back.

(Testimony of George M. McBride.)

Q. That period of time you are talking about is the time they had the trial before the examiner of the Board of Tax Appeals, is that right?

A. This wasn't anything, so far as I know, relative to—it was not anything to do with this 1930 matter of the Western Bond and Mortgage Company. In fact, I don't know what all the facts were because I had nothing to do with it.

Q. But the time when this occurred and you sat and listened to the testimony, and brought the books up, was when the case was tried before the examiner of the Board of Tax Appeals here in this building, in Portland? A. Yes.

Q. How long did you sit and listen to the testimony in that matter?

A. Oh, I don't remember exactly, probably an hour or two. I listened to them testifying on the stand. I think Mr. Ridgway was testifying when I was there but I don't know what—it did [20] not involve anything which concerned me and the Western Bond and Mortgage Company, particularly, in my end of it.

Q. It was Mr. Farrington's tax case, was it?

A. I would not say whether it was Mr. Farrington's or Mr. Ridgway's.

Q. During 1931, did you take a daily newspaper? A. Yes.

Q. Which one, or did you take both the Oregonian and the Journal?

A. I could not tell you which one I was taking at that time, because at different times I took dif-

(Testimony of George M. McBride.)

ferent papers, depending on how well they could be delivered to my home which was out in Multnomah at that time. I would not know.

Q. You read the papers, whichever one you took?

A. Well, I read parts of them. I won't say that I read all of them by any means, or all of any paper.

Q. Are you able to recall now having read anything about the Western Bond and Mortgage Company in the newspapers in 1931?

A. No. If there was anything in the newspapers, it was not brought to my attention. There was nothing there that I noticed about it particularly.

Q. You never had seen any newspaper articles during 1931 about the Western Bond and Mortgage Company? I mean, you have not seen any such papers since they were printed?

A. No, I have not.

Q. Not up to the present date? [21]

A. Well, I won't say up to the present date because one or two of these articles that were in there which concerned me personally, since I was trustee, I noticed some of them.

Q. I am talking about the 1931 newspapers.

A. No, I do not remember having seen anything in the newspapers back at that time at all.

Q. Mr. Teiser, your attorney, did not ever show you anything in any newspapers?

A. Not that I remember of.

Q. Did you attend the taking of the deposition

(Testimony of George M. McBride.)

of Mr. Brown, Brown's deposition, when you were taking the depositions of a man named Brown and Dr. Besson in the Bankruptcy Court where articles from the Oregonian in 1931 were displayed by your attorney?

Mr. Teiser: If your Honor please, I submit the question is not quite fair, unless you say what papers were submitted, what newspapers were handed him, because, as a matter of fact, the newspaper article handed him was a newspaper record of the bankruptcy and nothing else.

The Court: Well, he can ask. If the witness does not know, it is perfectly permissible for him to say that he does not know.

The Witness: Will you ask the question again?

Q. Did you attend that deposition, those depositions of Brown and Besson? [22]

A. I think I was present. I won't even be sure of that, but I believe I was present when they made their depositions.

Q. Do you recall Mr. Teiser showing to those witnesses newspaper clippings concerning the troubles of the Western Bond and Mortgage Company back in 1931?

A. No, I do not recall it now.

Q. All right. Your connection with the income tax department terminated, when, in 1933?

A. Terminated about July.

Q. July, 1933? A. July, 1933?

Q. How long had you been there? Since 1923?

A. Yes.



(Testimony of George M. McBride.)

Q. During that ten years, that had been your exclusive occupation?      A. Yes.

Q. Then, in 1933, that job, you being a Republican, kind of faded away from you, is that it?

A. It did.

Q. You then went out and undertook to practice law, or what did you do?

A. Well, I practiced law when I could find any to practice.

Q. And I wonder if you did not, yourself, approach Judge McNary to ask whether there was anything that the court could find for you in the way of receiverships or something of that [23] sort?

A. Yes.

Q. That was prior to your appointment as receiver of this corporation?

A. Yes, some time before that. I just, as a matter of conversation—as a conversational matter; I asked if there was anything of that kind, I would be very pleased to handle it.

Q. You needed the work?      A. Yes, I did.

Q. During that year that you practiced law, before you became receiver of the Western Bond and Mortgage Company, did you hold yourself out to the public as an income tax expert?

A. As an income tax counsellor. I never said "income tax expert."

Q. Well, in July of 1934, you needed the job, when you got the job as receiver of Western Bond, did you?

A. Well, I needed any job that came along in

(Testimony of George M. McBride.)

connection with my law work which would be lucrative.

Q. Then, on the 20th of July, you were appointed receiver of the Western Bond?

A. On the 13th, to be exact, I believe, the 13th of August?

Q. Oh yes. I had the wrong date. The 13th of August? A. The 13th of August.

Q. August 13, 1934, you were appointed receiver of the corporation? [24] A. Yes.

Q. And at that time the corporation was under investigation by the Attorney General's office and the Corporation Department, was it?

A. Yes. I did not know it at that time, however, because it had not been brought to my attention.

Q. That investigation was being conducted on behalf of the Attorney General by Ralph E. Moody?

A. Yes.

Q. And on behalf of the Corporation Commissioner by some auditors? A. Yes.

Q. Immediately after your appointment as receiver, you were waited upon by Mr. Moody?

A. Yes.

Q. And he discussed with you, at considerable length, the affairs of the Western Bond and Mortgage Company, did he not? A. Yes.

Q. And he discussed with you at that time the possibility of a suit against Mr. Farrington, isn't that a fact?

A. I won't be sure what he discussed or what

(Testimony of George M. McBride.)

particular suits we discussed. We discussed matters in general, but we did not have any particular case in point, so far as I remember, at all.

Q. Did he discuss with you at that time the old litigation which had been pending in 1931? [25]

A. Not that I remember at all.

Q. Would you say that he did not?

A. Well——

Mr. Teiser: Which case in 1931 do you mean, Mr. Reilly?

Mr. Reilly: Well, there were half a dozen cases.

Q. Brookie against Western Bond and Mortgage Company and Mr. Farrington and others; Thompson and some dozen or so others against the Western Bond and Mortgage Company, in which Mr. Farrington was named as a defendant—he was not named as a defendant but his name figured prominently. Then there was the King—I think there was another one. That is not the name.

Mr. Teiser: Pape.

Q. Pape and others, and then there was some other case referred to in the affidavit of Mr. McCurtain, all having to do with alleged defalcations by officers of the Western Bond and Mortgage Company, and most of them having Mr. Farrington's name mentioned.

Was any of that litigation discussed at all?

A. Not in the way of any particular thing, as I remember it. I had heard so many things said about Mr. Farrington and Mr. Ridgway by different

(Testimony of George M. McBride.)

ones who had lost their money, and all of those things got to be such a jumbled mass in my mind, from what things were brought to my ears, that the only thing I could do was to try and separate what seemed to be gossip [26] from something which was a fact.

Q. This gossip started coming to you at once upon your appointment as receiver, did it?

A. No, I don't think there was anything brought to my notice which would in any way affect this suit which we have brought at this time.

Q. The gossip about Mr. Farrington that you referred to a minute ago, that started coming to your ears very shortly after your appointment as receiver, did it not?

A. I don't know which particular thing about Mr. Farrington that you are referring to.

Q. I am referring to the things that you referred to a minute ago, the gossip there about Mr. Farrington, and you also included Mr. Ridgway—we will leave him out of this picture—the gossip about Mr. Farrington from investors or stockholders or people who had lost money in the Western Bond and Mortgage Company. That is what I am referring to. When did that start coming to you?

A. Well, those things were referred to by people who had lost money, who were sore about losing their money, but there was nothing so tangible about any of it that would put me on any notice as to any particular thing which they were referring to.

(Testimony of George M. McBride.)

Q. When did this sort of thing start, how soon after you were appointed receiver?

A. Well, the bondholders were coming in there, from eight or [27] ten in a day, many times.

Q. Beginning, when?

A. Beginning shortly after my appointment as receiver.

Q. When you say "shortly after" you mean within, at the outside, a month or two?

A. Oh well——

Q. Less than that?

A. Less than that, I would say.

Q. Within a week they started to come there?

A. Well, I would not say exactly because I did not keep any track of it.

Q. And they were very numerous, these people who came in and made complaints?

A. Yes they were very numerous. The people that came in, they were wanting principally to know when they were going to get their money.

Q. A good many of them were making charges against Mr. Farrington of one sort or another?

A. Well, as I say, very little of it was tangible.

Q. But, nevertheless, they were saying to you that Mr. Farrington had defrauded them, even though it was not tangible?

A. Well, they mentioned him along with Mr. Ridgway and Mr.——

Q. O'Flynn?

A. Mr. O'Flynn, who was the latter man in there. Mr. O'Flynn got the worst of the panning

(Testimony of George M. McBride.)

from the bondholders, but Mr. [28] Farrington and Mr. Ridgway, and some of the salesmen, as well, came in for panning by the people who had bought the bonds and were not able to cash in on them, so they were all sore about it, so there was conversation, naturally, sometimes along that line.

Q. What, if any, effort did you make while you were receiver to investigate any of these complaints?

A. Well, I looked up all of the tangible things that I could on the books of the Western Bond and Mortgage Company.

Q. What does that mean? Does that mean you examined the books?

A. Yes, I examined some of the books. I probably did not examine all of them. There was a very intricate system of bookkeeping and a great many subsidiary corporations and I, coming in without any knowledge of their bookkeeping system or anything of that kind—it was rather confusing to me. I had no way to go into anything very intricate about the——

Q. At the time Mr. Moody discussed this matter with you, he tendered you the aid of the auditors of the Corporation Department, did he not?

A. Well, to a limited degree. They were willing to explain anything to me that they could. Mr. Brown and Mr. Goodwin, I believe, had made an audit of the books, and up to that point they could have explained some things which I was unfamiliar with.



(Testimony of George M. McBride.)

Q. And Mr. Moody offered the services of these two auditors for the purpose of making any further investigation you wanted [29] made?

A. Yes.

Q. And at that time you were placed on a salary from the Corporation Department, was it?

A. No.

Q. The Attorney General's office?

A. The Attorney General.

Q. The Attorney General's office? A. Yes.

Q. The Attorney General put you on a salary of \$150 a month and paid your office expense, is that right?

A. Well, yes, they paid the expenses of the office there and this salary, if you can call it a salary, was to cover what investigations I could make as to what the thing was all about, in addition to what the auditors had found.

They told me that they had to make a rather quick audit of the thing and there might be other things which they had not found, but anything that came to my notice, they would be glad, naturally, to know about.

Q. An investigation for you?

A. Well, the investigation at that time was largely on Mr. O'Flynn's actions. We had not gone back of that particularly because the books that they were using at that time were largely books that had been in there through Mr. O'Flynn's term as an officer, so we did not go back of them very



(Testimony of George M. McBride.)

much. In fact, I [30] could not, because I did not know enough about the books.

Q. Mr. McBride, at the same time, the District Attorney was investigating the Western Bond and Mortgage Company, was he not?

A. Not that I know anything about. I never had—If he had anybody doing anything about it, I never saw them.

Q. You never discussed this matter with the District Attorney? A. No, I did not.

Q. During 1934 you were taking one or the other of the newspapers? A. Yes.

Q. And, of course, anything at or about the time of your appointment or thereafter, that related to the Western Bond and Mortgage Company, you read with considerable interest?

A. Well, yes, if I saw it. I might have overlooked some of the things, but I would not be sure about it.

Q. Do you know which paper you took at that time? A. No sir, I would not remember.

Q. I hand you herewith defendant's Pre-Trial Exhibit 79, being an article from the Oregonian of July 20, 1934, and I call your attention—you may read the whole thing, of course, but for the sake of what I want to ask you about, I call your attention to the last paragraph on the second page of that newspaper article appearing in the Oregonian of that date.

A. The next to the last paragraph?

Q. No, the last paragraph. Having refreshed

(Testimony of George M. McBride.)

your memory from that newspaper article, particularly that paragraph, I will ask [31] you if you now cannot recall that Mr. Moody and you discussed the question of both the civil and criminal liability of Mr. Farrington in connection with transactions while he was an officer of the Western Bond and Mortgage Company?

A. I do not remember any specific instances. We discussed the liability of most everybody who was connected with the matter, in a general way.

Q. Never mind anybody else. Let us confine this to Mr. Farrington. With that paragraph before you to refresh your memory as to what was said and done at that time, can't you now recall that you and Mr. Moody did discuss both the civil and criminal liability, if any, of Mr. Farrington for matters arising during his presidency of the Western Bond and Mortgage Company?

A. I cannot remember any specific instance. We maybe did so. This has been ten years ago and I cannot remember it specifically.

Q. Have you read these exhibits?

A. Not lately, no. If I have ever read them, I don't remember.

Q. Have you read them at all?

A. I would not even know, excepting your telling me that this is a copy of an article in the Oregonian. I would not remember back far enough to remember any article in the Oregonian ten years ago. I could not remember the article or whether I saw the article at that time. [32]

(Testimony of George M. McBride.)

Q. Well, it has been stipulated that these are articles in the papers——

Mr. Teiser: What date was that?

Mr. Reilly: This was July 20, 1934.

Mr. Teiser: It was before he was appointed?

Mr. Reilly: Yes.

Q. I will show you some later ones. I think you had better look this one over, Mr. McBride, and I will let you pick between them. The bailiff will hand you defendant's Pre-Trial Exhibit 78, along with it, which is an article from the Journal, and you pick out the paper that you were taking at that time. I want you to look those articles over and presently I want to offer them in evidence.

Mr. Teiser: What date is that article?

Mr. Reilly: On that same date, or the day before or the day after.

Q. Which one do you think was in the paper you took?

A. Well, even now, I would not be certain at that time what paper. I took the Journal part of the time, and, a part of the time, I took the Oregonian. To remember back ten years as to what paper I read at that time or what I saw, I could not testify because I would not know.

Q. The articles are substantially alike. You read one or the other at that time?

A. Well, I could only say that I read one or the other of those [33] papers. What I read there I would not be able to testify to, of course, any

(Testimony of George M. McBride.)

more than you would be able to testify what paper you read ten years ago and what you read in it.

Q. Well, at that time, you were considerably interested in Mr. Farrington because of the gossip that had been around the income tax department about his supposed or alleged tax liability, isn't that right?

A. Well, I was interested at this time because, naturally, as an officer of the Western Bond, why, his name was mentioned quite often with relation to it.

Mr. Reilly: We will offer defendant's Pre-Trial Exhibits 78 and 79 in evidence, your Honor.

Mr. Teiser: If you Honor please, I do not know of any statement that he made which indicates that they would be evidentiary in any way.

The Court: Objection?

Mr. Reilly: It is stipulated that they were in the public press on the date indicated.

Mr. Teiser: No question about that.

Mr. Reilly: Prominently displayed there for all men to read.

Mr. Teiser: No question about the fact that they were in the public press.

The Court: We can do this two ways. We can admit all of these matters, or we can leave them until the time they are properly admissible. I take it that you probably would have [34] some testimony that you could put on that would make them properly admissible. As far as this date is concerned, he does not even remember about it.

(Testimony of George M. McBride.)

Mr. Reilly: They are pre-trial exhibits.

The Court: Yes.

Mr. Teiser: I will admit, if your Honor please, that those two articles appeared in the papers which they purport to appear in, at the time set forth on those articles as having appeared.

The Court: I will follow my usual rule. The documents are not admissible on cross examination.

Mr. Reilly: Very well, your Honor.

The Court: Unless they are stipulated in.

Q. Mr. McBride, how long did you continue as receiver?      A. What is that?

Q. How long did you continue as receiver?

A. Until, I believe, the 12th of December when I qualified as the Trustee.

Q. 1934?      A. 1934, yes.

Q. In the meantime, the corporation had been adjudicated a bankrupt?      A. Yes.

Q. During all the time that you were receiver the Attorney General paid you your salary of \$150 a month and your office expenses? [35]

A. Yes.

Q. What services were performed for the Attorney General's office except that of investigating the things that had been discussed with you about Mr. Farrington and the other officers, with an eye to criminal prosecution?

A. Well, I was investigating whatever came under my notice relative to either criminal or any proceeding which would help the bondholders.

(Testimony of George M. McBride.)

That was merely to help out in a general way and as to what had gone on.

Q. During the fall of 1934, I will ask you whether or not the office of the Attorney General of Oregon communicated, to your knowledge, with all of the creditors and stockholders of the Western Bond and Mortgage Company, by mail?

A. I found out after this matter had happened that they had, but I did not know at the time, and before he did communicate with these bondholders, that he had done so.

Q. I will ask you whether or not in these communications the Attorney General solicited powers of attorney and advised claimants that it was the intention of the Attorney General to vote all proxies received for you as Trustee of the bankrupt estate?

Mr. Teiser: I object to that as immaterial, irrelevant and incompetent respecting any issue here on trial; also, I submit whether the Attorney General——

The Court: The objection is overruled. [36]

A. I could not state exactly what the Attorney General's office did do. It would be something that Mr. Moody could tell you about much better, because I did not take any particular notice of that. However, all of these claims—not all of them, but a great many of them were made out, giving a power of attorney to the Attorney General, so I would suppose that that probably happened.

(Testimony of George M. McBride.)

Q. A great mass of claims were put through the Attorney General, were they not?

A. Yes, a great many of them.

Q. And it was by the vote of the Attorney General under those proxies that you were elected Trustee?

A. Yes, I think that at least was quite—really was one of the things that helped to make my election certain.

Q. Well, as a matter of fact, did not the Attorney General have very much more than a majority of all claims?

A. I never went into that particularly to know how many of them he had. I know I was elected Trustee and, up to that time, I had not taken any particular interest in it as to just how the matter was progressing. I knew that the notices had been sent out, and I know that I was elected Trustee, but as to these other things, as to who the Attorney General sent these notices to, I really was not interested.

Q. Did you continue, after your election as Trustee, on a salary from the Attorney General's office? [37]

A. Up to around, as I recollect, the first of June.

Q. Of 1935?           A. Yes.

Q. A salary of \$150 a month?

A. \$150 a month, yes.

Q. And for what purpose?

A. Well, the same purpose that had been before,



(Testimony of George M. McBride.)

investigating ordinarily into the various things that came before me and investigating also about seven or eight hundred claims, which came into the Bankruptcy Court and which were sent down to me at the office in the Western Bond, the old building there where they had the office, and which claims, it was necessary for me to go over and get them into some shape to refer to them as the various claimants wrote about them or were later, perhaps, to get a dividend on.

Q. Mr. McBride, that was a part of your duties as Trustee. What were you doing for the Attorney General?

A. Well, now, that would be listed as investigations, and I gave them whatever I thought would help in any way or would be a help to the bondholders and to the Attorney General in any criminal investigation that he was making.

Q. During the time that you were Trustee and were also receiving a salary from the Attorney General's office, did you devote your whole time to the Western Bond and Mortgage Company affairs? [38]

A. Well, not altogether. There were a few cases which came to me, which I was able to handle, but it was necessary finally to give up my office in the Failing Building because I was called to the other office so many times I could not carry on both offices at the same time, and it was necessary to devote practically the whole time to that for the first year.

(Testimony of George M. McBride.)

Q. When did you move down to the Western Bond office?

A. Oh, well, I went down there the morning that the Judges approved the bond. I went immediately down there and I spent more than half of my time there from then on. I never was able, after I began to go into matters, to spend more than half of the time in my own office.

Q. When did you actually move down to the Western Bond building?

A. I could not tell you when I gave up the other offices, but there was not any particular necessity for keeping them, because there was nothing to justify it.

Q. In 1935, as I understand it, you were apprised of a claim made by the Internal Revenue Department against the corporation for taxes?

A. Yes.

Q. And in what form was that claim made? In writing?

A. Well, originally there was an assessment, what they termed, I think, an emergency assessment. They sent a copy of that to the Western Bond and Mortgage Company, and, later, they filed this claim, which is a routine claim that they file, against [39] all additional taxes that are assessed and have not been paid. They filed that claim to protect the Government against any conveyance of property or anything which might result to its detriment.

Q. You, as a former head of the Income Tax

(Testimony of George M. McBride.)

Department in Portland, and as a tax counsellor for the year after your retirement, knew perfectly well how to get information as to the basis of that claim, did you not?

A. No, I did not. I did not have any copy of the revenue agent's report at all and I never did get one until this matter came out here.

Q. What effort did you make to get the information concerning that tax claim?

A. Well, I went up to the revenue agent's office to see if they had a copy or could get me a copy of that, and they did not have any copies, and they said they wrote to the revenue agent in charge at Seattle and he did not have a copy that I could have. Some long time later—I do not know just how long—they told me—I went up later on and they said that they thought that Mr. Jacobs had a copy; that he had been handling the matter at that time. I went up to his office later, quite some time later.

Q. What do you mean by "quite some time later"?

A. Oh, it was several—I would say three or four years later.

Q. Three or four years? [40]

A. Some time anyway. Mr. Jacobs was away. He was in the east and I did not—the girl did not know anything about it and, so, I did not get it.

Q. And you did not go back there?

A. I did not go back. I thought that when the time came that the claim came up that we would

(Testimony of George M. McBride.)

get a copy of it from the Attorney General or somewhere, and there was not any particular necessity in the meantime, because it had to come up later anyway.

Q. Then, as I understand you, the extent of your efforts to ascertain the basis of this claim of the Government for \$50,000 was one visit to the office of the Internal Revenue Department in Portland and one visit to Bob Jacobs' office, on which occasion you found him to be out of town?

A. Yes. I do not remember any other times that I went after that. It was not coming up at that particular time, and the assessment that was made explained it enough to know how much they claimed, and there did not seem any necessity for going into it so much deeper until the claim was acted on before the Referee, so I did not go any further with it when I found that Mr. Jacobs was not there, and I did not know he even had it.

Q. In March of 1935, you, with the consent of the Referee in Bankruptcy, employed an attorney to assist you in your work as Trustee and in your investigations? [41]

A. I employed an attorney to do anything that was necessary for an attorney to do to take action before the Referee in Bankruptcy and before the court.

Q. That attorney was John R. Latourette of Portland?      A. Yes.

Q. I will ask you whether John R. Latourette did not discuss with you, in considerable detail, the

(Testimony of George M. McBride.)

advisability of undertaking to bring an action against Mr. Farrington on any of the things which had been mentioned in the 1931 lawsuit?

A. I don't remember having discussed that with Mr. Latourette at all.

Mr. Teiser: What lawsuit?

Mr. Reilly: The 1931 lawsuit.

Q. At the time you employed Mr. Latourette, you still had available the services of the auditors of the Corporation Commission?

A. As I say, the availability of those services was very limited. They were willing to tell me anything that they knew, that they had learned on the audit, but they were working on other cases for the Corporation Commissioner, and, they did not, so far as I judged from their actions—they merely wanted to get such advice and assistance as they could without taking up the time——

Q. Who put a limit on their activities in your behalf?

A. I would not know about that, about how they were limited, as [42] to the Corporation Commissioner.

Q. Did anybody suggest that they had any limitations put on their activities?

A. Not specifically, no.

Q. Did you ever ask the Attorney General for instructions to them to give you assistance?

A. They were in the office with Mr. Moody at different times, but I do not believe—they never stated to me that they had instructions to go on

(Testimony of George M. McBride.)

any specific audit, just simply to give such help as they could with reference to the thing, having knowledge by reason of having made an audit of the Western Bond.

Q. Did Mr. Moody, when he was there with the auditors, ever place any limitation at all upon their activities, or did he offer you free reign?

A. I could not say as to that. He did not make any specific statement to that effect, as far as I know.

Q. You, yourself, with the approval of the court, employed an auditor on a contingent fee basis in 1936, did you not?      A. In 1936?

Q. Correct.

A. Well, I employed an auditor in 1936, through the order of the Referee.

Q. That was Mr. R. Erickson?      A. Yes.

Q. And, in the meantime, Mr. Latourette had been succeeded as your attorney by Messrs. Teiser and Keller? [43]      A. Yes.

Q. And Mr. Erickson offices with Messrs. Teiser and Keller, does he?

A. They are in the same suite there in the Morgan Building.

Q. And were at all times since your appointment as Trustee?      A. Yes.

Q. Or at least since his employment?

A. Yes.

Mr. Teiser: If your Honor please, I ask that the witness not answer that question as to whether the auditor, Mr. Erickson, was employed on a con-



(Testimony of George M. McBride.)

tingent fee basis. I object to that question, unless the basis on which he was employed is gone into. I do not know what difference it would make anyhow. As a matter of fact, he was not on a contingent fee basis.

Mr. Reilly: You say he was or was not?

Mr. Teiser: He was not. The question asked and the witness' answer might leave the impression that there was something mysterious and some impropriety in the employment of an auditor or the fact that he has his office in the same suite I have.

The Court: I am not going to pay any attention to that, gentlemen.

Mr. Reilly: The only purpose of the question, the only reason for the contingent fee part of it and the association of his attorney is to show the availability of assistance, because of the allegations in the complaint to the effect that they were unable, for financial reasons, to make an investigation. [44] That is the sole purpose of it, your Honor, and since we are questioned about that I would like to get——

Mr. Teiser: If you are looking for that exhibit——

Mr. Reilly: I will look at that later, if I may, and produce it, because the exhibits are not in order.

Mr. Teiser: I think it is 107.

Mr. Reilly: 104. No, that is wrong, 112.

Mr. Teiser: That is right. 112 is the exhibit.

Q. I hand you herewith Pre-Trial Exhibit 112,



(Testimony of George M. McBride.)

which is admitted to be a letter received by you from Mr. Erickson, which will give you the date, from which you can see that you were employed in 1936. Is that correct?

Mr. Teiser: I would like to make an objection to this letter when it is offered.

Mr. Reilly: I am asking about the date, first.

Q. Was the arrangement provided for in that letter confirmed and adopted?

A. Well, whether this was the amount allowed by the Referee or whether this was actually used for a basis, I cannot say right now, but this evidently was.

Mr. Teiser: We admit that was the basis. As a matter of fact, it was the basis of the allowance.

Mr. Reilly: We will offer the letter in evidence, your Honor, that being the one which we say is a contingent fee arrangement. [45]

Mr. Teiser: If your Honor please, I object to Mr. Reilly's statement that the reason he is offering this letter in evidence is because it was on a contingent fee basis, that the accountant was employed on a contingent fee basis, and the plaintiff therefore had the services of the accountant available at any time, perhaps presumably without charge, I take it, unless there was recovery.

Mr. Reilly: If he did not recover anything, there is no charge——

The Court: Let us not argue. If you have any objection, make it to the Court and I will rule.

(Testimony of George M. McBride.)

Mr. Teiser: I maintain that this is not an agreement——

The Court: I do not want to hear any argument. Do you want to object to its admission?

Mr. Teiser: I object to the admission of this document.

The Court: All right. It is ruled out.

Mr. Teiser: I object to its admission.

The Court: It is ruled out.

Mr. Teiser: Pardon me.

Q. Mr. McBride, when was it that you first learned of the fact that there was some litigation back in 1931, in this court as well as in the Circuit Court of Oregon, for Multnomah County, in which charges were made to the effect that Mr. Farrington had misappropriated monies of the Western Bond and Mortgage Company? [46]

A. I could not say that I was cognizant of what had been done relative to that litigation. I knew there had been some litigation, but I did not know exactly what, and I could not state at what time I even heard about that litigation and what it was at all. I never was familiar with it. I did not know about the details of it at all.

Q. Tell me, as closely as you can, when you first learned that there had been any such litigation?

A. I cannot tell you that at all.

Q. Give me an approximation. You can tell within fifteen years, certainly.

A. Well, I did know of it here just within the last—since this started.

(Testimony of George M. McBride.)

Q. Is that the first you heard of it during all that time?

A. Well, it possibly is not. I would not say because those cases that had been brought, or might have been brought—even dismissed or whatever happened to them—I really did not know what the details were. I didn't really go into that very thoroughly.

Q. That is not the question I asked you. I am asking you when you first heard that there had been some litigation back in 1931 involving Mr. Farrington.

A. Well, I could not say that I—when I heard that there was any litigation. I think, however, that I probably had heard that there was some litigation back prior to my time, but what [47] the details of it were I didn't know, and it may have been any time within the first three or four years. That would be my idea of it at this time because then would be the most likely time I would hear it.

Q. When you say "the first three or four years," you mean the first three or four years subsequent to your appointment as Trustee or as Receiver?

A. Yes. If I heard about it enough to pay any attention to it—I heard so many things, and those things which were not immediately necessary for the investigation, many of them, were not paid much attention to—the situation that had happened before my time, which did not appear to be necessary for me to take up.

Q. When you heard of that prior litigation,

(Testimony of George M. McBride.)

which you have now narrowed down to somewhere from 1934 to 1938, did you make any attempt to find out anything about it?

A. Well, not specifically. I don't believe those cases came up, and were dead, as far as I know. I did not even know what the title of the case was.

Q. The answer is "no". You did not make any effort whatever, is that right?

A. No, not that I remember of making any effort to find out what they were.

Q. Did you ever talk to Mr. Agnew, the Seattle attorney for the Western Bond, about prior litigation?

A. I never talked to Mr. Agnew for to exceed ten minutes all the [48] time I was there. I never saw him but that one time. He merely came in and passed the time of day. We did not go into any details on any particular thing and——

Q. Did you find any files of the Western Bond and Mortgage Company with reference to such litigation? A. Not that I remember of.

Q. Didn't Agnew get paid any fees?

A. What is that?

Q. Didn't Agnew get paid any fees by Western Bond?

A. He might have. I would not know. He probably obtained fees for his work as attorney; undoubtedly would pay the attorney, but I would not know—I would not question attorney's fees which were paid, and they had more or less litigation all the time on one thing and another—fore-

(Testimony of George M. McBride.)

closure of mortgages and suits and various things, and I would not know Mr. Agnew's fee particularly. I probably saw it at the time that I looked over Western Bond and Mortgage Company books—undoubtedly would see it, but I don't remember now, ten years from then, what attorneys' fees were paid to the different ones. I could not tell at all.

Q. Did you find any correspondence in the Western Bond files, between the Western Bond and Mortgage Company and Mr. Agnew of Seattle about the litigation that was pending back in 1931?

A. Not that I remember of.

Q. Did you go back and examine the petition for adjudication in [49] bankruptcy, which was filed, as I recall, in November, 1931?

A. Well, I suppose I had seen the petition. I undoubtedly did. The attorneys were supposed to look after that part of it, but I undoubtedly saw it.

Q. Did you discuss with the attorneys who filed the petition the affairs of the Western Bond in 1931 and the litigation which was then pending?

Mr. Teiser: What petition are you speaking of?

Mr. Reilly: The petition for adjudication in bankruptcy.

Mr. Teiser: If your Honor please, I suppose the question might have a bearing in showing there was a petition in bankruptcy, but it has no bearing whatsoever as the fraudulent nature of the transactions which may be uncovered, and a petition in bankruptcy in this or any other case would simply

(Testimony of George M. McBride.)

set forth the fact of bankruptcy, and I take it that this is an immaterial and irrelevant question.

The Court: I want again to suggest that I do not want any conversation between attorneys. We are not trying this case that way. If there is any objection, make your objection to the Court and I will rule.

Mr. Teiser: I thought that is what I did. I intended to make an objection.

The Court: I do not want any conversations going on between the attorneys.

Mr. Teiser: I apologize, your Honor, for that. [50]

The Court: I do not want any apology. I do not want any more conversations between attorneys about any of these things. If there is any objection, make it and I will rule on it. I will overrule this one. Go ahead.

Mr. Reilly: I think there is an unanswered question.

The Court: Yes. Read the question.

(Pending question read.)

A. No.

Q. Did you ever hear of the case of Brockie against the Western Bond and Mortgage Company and other defendants, including the defendant Farrington, up until after the present lawsuit was brought by you in this court?

A. Well, I probably did, but I did not tax my mind with it. As I say, it was not anything that was, I think, in litigation at the time after I took



(Testimony of George M. McBride.)

over, and I did not tax my mind with. I doubt if I knew the title of the case at the time. I could not remember the names of any of those cases until I saw the name of it here. Mr. Teiser mentioned them just yesterday, I think.

Q. Did you make any attempt to communicate with any attorney representing any parties in either the Brockie case or any other litigation that was pending in 1931? A. No, I did not.

The Court: Mr. Reilly, it is evident this is going to take some time. [51]

Mr. Reilly: I think I am pretty nearly through, your Honor.

The Court: If this is a convenient place, I would suspend.

Mr. Reilly: Well, it is, your Honor, because there is one branch of it I would like to look up.

The Court: Court will suspend until two o'clock. I may say I do not intend to run much past four o'clock this afternoon.

(Thereupon at 12:30 o'clock p. m. a recess was taken until 2:00 o'clock p. m.) [52]

Court reconvened at 2:00 o'clock p. m. November 28, 1944, pursuant to recess.

GEORGE M. McBRIDE,

the plaintiff herein, having been previously duly sworn, resumed the stand and further testified as follows:



(Testimony of George M. McBride.)

Cross-Examination (Continued)

By Mr. Reilly:

Q. Mr. McBride, from your investigation, you discovered that Mr. Farrington had sold his stock, or the stock that he owned or controlled, in the Western Bond and Mortgage Company to a Seattle interest, in December 1930?

A. Yes, I knew that he had sold his stock to—I believe to Mr. O'Flynn or a company that was controlled by Mr. O'Flynn.

Q. The Massachusetts Mortgage Company?

A. Yes, which Mr. O'Flynn controlled.

Q. You knew that he had retired from the directorate of the company and was no longer an officer or director after December 20, 1930?

A. Well, whatever that date was; about that time. I knew it from the records, from the corporation records, yes.

Q. You got in possession of the books of the Western Bond and Mortgage Company, and its subsidiaries, in the summer or fall of 1934, four years later?

A. Yes. [53]

Q. Now, at that time or since that time, did you make a search for the books of the Keystone Finance Company?

A. Well, not specifically, I think, just at that time, but I aimed, as nearly as I could, to locate all these various things, and the Keystone Finance Company was one of the subsidiaries.

Q. In any event, not later than 1936, or, of

(Testimony of George M. McBride.)

course, before the filing of the petition for leave to sue the Bank of California, you did look for the Keystone books, did you?      A. Yes.

Q. And you were not able to find them?

A. Oh, I think we found some of the Keystone books. Right at the moment, I do not remember, but my recollection is that we had some of the Keystone books, anyway.

Q. You found a stock book. I think that was among the exhibits, so you found that.

A. Well, I believe so, as I remember now.

Q. What else, if anything, did you find?

A. What is that?

Q. What else, if anything, did you find of the Keystone Finance Company?

A. Well, I cannot answer you offhand. I would show in the records, however, but I can't right now remember the details as to what we found there.

Q. Let me call your attention to your testimony in the case of McBride against the Bank of California, when you were examined [54] by Mr. Thompson.

I will ask you whether the following questions were not asked you by Mr. Thompson and if you did not make the following answers:

“Q. We are not willing to do that. We have asked to have you produce the books. We want them here, these particular ones I have asked to have brought here.

“Mr. Teiser: Keystone Finance Company books?

(Testimony of George M. McBride.)

“Mr. Thompson: Keystone Finance Company books.

“A. So far as my recollection goes, we have never been able to find those books. I don’t know just what books you refer to, but my best recollection now is that Mr. Erickson and I looked for those books but were unable to find them, whatever they may be.”

I will call your attention to some of your testimony, to refresh your memory.

Do you remember having that question asked you and making that answer?

A. Well, not specifically; specifically, no, I do not just remember what questions were asked me. Of course, at that time it was closer to the time that I had been going into these matters.

Q. Were you asked this question by Mr. Thompson:

“Q. I will have to press you, George, just a little. Did you make any effort to find books of account of the [55] Keystone Finance Company at all in response to this request?”

And the answer:

“A. Well, we made efforts originally to find them. I haven’t made any special attempt since this, for the reason that Mr. Munro went down there with me and we looked for any books which might throw any light on this subject, and I assisted him and felt that anything that we could find or that Mr. Munro could find had been found.”

Do you remember that question and answer?

(Testimony of George M. McBride.)

A. Well, I don't—I can't remember just what I did say or what I testified to at that time, but my recollection is that Mr. Munro who Mr. Thompson was talking about was an accountant we sent down there to try and find some of these books for the purposes of the trial, or for whatever purpose he wanted them for, and that he looked for the books, I suppose, according to this testimony here.

At this time I would not remember it offhand that we did, or whether we didn't, but if I testified to it at that time, when my memory was fresh, I suppose it is correct.

Q. I will ask you whether the following question was asked by Mr. Thompson and whether your answer was as stated:

“Q. Mr. McBride, you spoke about there being tons of those old records. Have you been through all of those, so that you know what is there?

“A. I have been through them, I believe, through [56] everything except the individual files, correspondence files, on canceled bondholders. There is a vast amount of those, thousands and thousands of them, and they would produce no results by going through them, so far as I know, and unless there was some specific reason for it there seemed no reason for going through them. However, I have been through even thousands of letters and those various things, and I went through all those books to determine anything which appeared to be relevant. I can't keep it all in my mind now, of course, after three or four years' time. I spent

(Testimony of George M. McBride.)

a year, I suppose, going through all the various records in order to run down the various angles of the thing."

Do you remember so testifying?

A. I do not remember that specific testimony, but——

Q. Is that testimony a fact?

A. This was with relation to the Bank of California, however.

Q. Was the following question asked of you and did you make the following answer:

"Q. All right, and I beg your pardon for not having clear in my mind exactly what it was. Now, aside from those correspondence files, then, I will say that you have been through these records that you mention sufficiently so that you can tell whether a certain set of stuff—I don't care about the particular books—of Keystone Finance Company books are or are not there?" [57]

To which you answered:

"A. Right now, from my recollection of having gone through them, I would say that very little of the Keystone Finance Company's accounts which would reveal anything really of importance. Whether there is anything there, I wouldn't say."

Do you recall so testifying?

A. I suppose that is correct, if that is what I testified to.

Q. And did you testify in this fashion:

"Q. All right. Now, this item of Books of Account of Keystone Finance Company showing dis-

(Testimony of George M. McBride.)

position of moneys deposited in The Bank of California, N. A., when the mortgages in litigation in this matter were executed?

“A. Well, since testifying this morning, and after refreshing my mind somewhat in going over the records, I would say positively that we never did have those books. We made an effort to find them, and I know that Mr. Erickson and myself searched very diligently to find those books of the Keystone Finance Company and made inquiry from Miss Gallagher about them, I remember that, but we were unable to find them.”

Did you so testify?

A. Yes, I believe so.

Q. Do you remember now? Can you answer my question as to whether the bulk of the books of the Keystone Finance Company are missing? [58]

A. Well, that would appear to indicate that they were, and my memory at that time was better refreshed than it is now, because right now I really would not swear to it at all, other than what is testified to there.

Q. What do you say now? Do you know where the books of the Keystone Finance Company are?

A. No, I don't right now.

Q. The Massachusetts Mortgage Company's manager or agent was a man named O'Flynn, wasn't it? A. Yes.

Q. You stated maybe the sale of the Farrington stock was to O'Flynn, or the mortgage company. That is the man you are referring to?

(Testimony of George M. McBride.)

A. Yes, O'Flynn; he was the leading light of the Massachusetts Mortgage Company.

Q. You know, from your investigation, that Mr. O'Flynn conducted the negotiations leading up to the sale, on behalf of the Massachusetts Mortgage Company, do you not?

A. I do not know anything about that part of it, who negotiated it, or how it was led up to, or anything about that part of it.

Q. You know that Mr. O'Flynn participated in it?

A. Well, undoubtedly he participated in it, if he bought the stock.

Q. Yes. Is Mr. O'Flynn now living? [59]

A. No.

Q. How long has it been that he died?

A. I can't tell you, but I know he has been dead for some years. I don't know how long.

Q. He was dead prior to the institution of the present action? A. Yes.

Q. Do you know what, if any, part in the transaction which involved the sale of the Farrington stock to the Massachusetts Mortgage Company Arthur C. Spencer had?

A. I did not get the last part of the question.

Q. Do you know what part in that transaction, if any, Arthur C. Spencer had? A. No.

Q. You do not know anything about that?

A. No.

Mr. Reilly: That is all. There is one question



(Testimony of George M. McBride.)

I would like to ask, if I may, with the Court's permission.

Q. Did you find any books of the General Loan Company?      A. I don't remember them at all.

Q. You do not know where any books of the General Loan Company can be found?

A. No, I do not.

Mr. Reilly: That is all.

### Redirect Examination

By Mr. Teiser:

Q. Mr. McBride, you have testified to the fact that the [60] attorney general's office paid you for a period of time when you were receiver, and I think extended over a little time when you were trustee, at the rate of \$150 a month.

Will you state how it was that they happened to pay you that amount of money, and the circumstances surrounding the agreement to pay?

A. Well, I was in a position where I could not afford to give all my time staying down there and interviewing the public as they came in about bonds, these bondholders and these various people, and handling various questions that came up. I just could not give the time to it, and I told Mr. Moody, in conversation, that I just could not do it any longer and he suggested that if I would go on through with it, in order for the Attorney General's office to get information about things that came up and the conditions I found there, that they would put me on the payroll and take care of this

(Testimony of George M. McBride.)

expense. We had no money there to pay any expenses. We had nothing. There was \$15.80 there when I took over, that besides a couple of town lots which were not very valuable, were the only things that were free that I could discover. I told him that I just could not afford to, that I did not have the money to go ahead and do that.

Q. Mr. McBride, Mr. Reilly asked you whether or not the Attorney General's office did not pay you \$150 a month and your office expenses, and I think you answered "Yes, for a [61] period of time." The office expenses that was referred to was whose office expense? Your's or the Western Bond and Mortgage Company's?

A. No, the Western Bond office expense. They had quite a large office and also another room which was rented, in part, to other parties, but they were all filled with files and books, and it was necessary to keep them that way so that we could get at the various things relating to the corporation.

Q. All I want to know is: Did they pay your office expenses or not?

A. Personal expenses, you mean?

Q. Your own office expense rather than the Western Bond and Mortgage Company office.

A. Well, I would not say so, no; they did not pay my expenses of my office that I had up in the Failing Building, no.

Q. When did you close that office in the Failing Building?

(Testimony of George M. McBride.)

A. I cannot tell you exactly. I imagine about—I would think probably along about October, but I won't say for certain.

Q. October of what year? A. 1934.

Mr. Teiser: That is all.

Mr. Reilly: That is all.

(Witness excused.)

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## R. ERICKSON

was thereupon produced as a witness on behalf of the plaintiff, and, being first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Teiser:

Q. Mr. Erickson, what is your occupation?

A. Accountant.

Q. Are you a Certified Public Accountant?

A. Yes, sir; hold a certificate from the Oregon State Board of Accountancy.

Q. At one time, you were a member of that board, weren't you? A. Yes, sir.

Q. How long have you been practicing accountancy in this area?

A. Public Accounting since 1924.

Q. Where is your office?

A. 738 Morgan Building.

Q. Is that the suite of offices that I occupy also?

A. Yes, sir.

(Testimony of R. Erickson.)

Q. Have you any connection with me in your work other than occupying the same suite of offices I do, the same group of offices?

A. No, sir.

Q. Any compensation that you get or I get in any way passing between us? A. No, sir. [63]

Q. Have you examined the books and accounts of the Western Bond and Mortgage Company?

A. Yes, on several occasions.

Q. Will you state from such examination whether the books, as kept, disclose on their face any improprieties in respect to the matters alleged in the complaint in this action?

Mr. Reilly: That is objected to as calling for a conclusion of the witness, not testimony as to any fact.

The Court: Yes, I think so.

Q. State whether or not the books of the Western Bond and Mortgage Company show on their face any improprieties in regard to the transactions concerning the Western Guaranty matters?

Mr. Reilly: The same objection, if the Court please.

The Court: I think he may answer.

A. No, they do not.

Q. Do they show any improprieties in regard to the transactions concerning Western Bond and Mortgage Company's transfer of 40,000 shares of Consolidated Credit Company's Class "A," no par stock, in return for stock of the Keystone Finance Company?

(Testimony of R. Erickson.)

Mr. Reilly: That is objected to as calling for a conclusion of the witness, not calling for any testimony as to any fact.

(Pending question read.)

The Court: That all depends on what is an impropriety. [64] The Court sustains the objection.

Mr. Teiser: Let me put it this way:

Q. Did the records on the books of the Western Bond and Mortgage Company in connection with the matter which I have just detailed, that is, the transfer of the Consolidated stock for Keystone stock give rise to, or was it of such a nature as would give rise to any question as it was set forth on its books?

Mr. Reilly: That is objected to as incompetent, irrelevant and immaterial, calling for a conclusion of the witness, and not the best testimony as to any fact, depending entirely upon the nature of the witness and not the nature of the books. The books are themselves the best evidence. It seems to me that this is wholly outside of the realm of competent testimony.

Mr. Teiser: If your Honor please, it seems to me that it is claimed here that the books and records of the Western Bond and Mortgage Company were of such a nature that even the Trustee, who was not a Certified Public Accountant, would be caused to be suspicious concerning them and would necessarily cause them to make inquiry concerning those records.

The Court: He may testify as to whether he was suspicious or not, that is true, but for you to say

(Testimony of R. Erickson.)

there was nothing on their face indicating any impropriety or anything that would cause anybody to question them is improper. I have to [65] draw the conclusions. It is not for the witness to draw them for me. The objection is sustained.

Q. Mr. Erickson, as an expert accountant, would you or would you not say, or what would you say—I will put it that way—as to the nature of the entries on the books and records of the Western Bond and Mortgage Company in connection with the transaction which I have just referred to, as to whether or not they cause any question to arise in your mind as to their propriety?

Mr. Reilly: Object to it, if your Honor please, as involving several questions.

The Court: Objection sustained.

Q. What was your reaction as a public accountant to the records of the transaction, as shown by the books, in connection with the transaction as to the 40,000 shares of stock of the Consolidated Credit Company for stock in the Keystone Finance Company?

Mr. Reilly: That is objected to as calling for a state of mind of the witness and not for testimony as to the fact.

The Court: No. If the witness testifies that at that time the layout was such that he was suspicious, obviously, that shows the time when this suit should have been brought. Therefore, I would permit him to answer.

Mr. Reilly: Exception.

(Testimony of R. Erickson.)

The Court: You do not need to take exceptions.

Mr. Reilly: I have got so I don't remember how——

The Court: I thought that probably you were trying to shake the confidence of the court.

Mr. Reilly: I have given up that hope a long time ago.

A. There is a single entry on the books of the Western Bond and Mortgage Company recording this transaction, which recites that the Western Bond and Mortgage Company parted with 40,000 shares of Class "A" common stock of the Consolidated Credit Corporation, for which they received 1500 shares no par value stock of the Keystone Finance Company, and the figures are of equal value for what was parted with and what was received. On the face of it, there is nothing to indicate that there is anything to be questioned in the transaction.

Q. On the face of the books, did you have any question when you examined them?

A. Not at the time when I saw the entry originally.

Q. When did you first discover any reason for suspicion in regard to those two transactions which I have questioned you concerning?

Mr. Reilly: I object to the double nature of the question. I think it ought to be confined to one thing at a time.

Q. Answer one. Answer as to the Western



(Testimony of R. Erickson.)

Guaranty Company stock, and then answer the next question.

A. I would say it was in June or July of 1943.

Q. When did you discover any questionable thing, anything of [67] a questionable nature, if you did discover it, as to the transaction concerning Keystone and Consolidated Credit?

A. It was at the same time. It was all in connection with the same examination and report that I was making.

Q. You had examined these books before, had you not?      A. Yes, on several occasions.

Q. You had examined them, I believe, in connection with the discovery or ascertaining of some data concerning the transaction in regard to The Bank of California transaction, which was the occasion of a suit in this court?      A. Yes, sir.

Q. At that time did you discover anything in connection with these two matters?

A. At that time, I saw these two transactions were recorded, and looked into them, particularly, however, with regard to whether they had any effect on The Bank of California matter and, finding that they did not, put them aside and did not refer to them until on a later occasion.

Q. When did this later occasion occur, and when did you discover the questionable character of the transactions which they related to?

A. I have stated that was in June or July, 1943.

Q. Will you state how and the circumstances concerning your discovery of the situation, who em-

(Testimony of R. Erickson.)

ployed you, and what was the data you had and how you discovered it generally, without going [68] into any minute details at all; just so the court can understand and can know how it came about, how you discovered it then and had not discovered it earlier.

A. At about the time the United States Government was pressing its claim, as I recall, against the bankrupt estate, their claim for income tax for the year 1930, and Mr. McBride employed me, through yourself, to make an examination of the claim of the Government and to see whether it was in order, or if there were features about it that would offset it or reduce it, or eliminate it, to find out what they were and make a report.

Q. That was in regard to taxes?

A. I beg your pardon?

Q. That was in regard to taxes?

A. That was in regard to income tax for the year 1930. In connection with that claim and that engagement, I asked you to secure for me the original agent's report. There had been an amended report made that same year, and a copy of the amended report was in the Western Bond and Mortgage Company files. The original report, however, was not there, and I had never been able to find it, although I had looked for it previously and had asked if it were available.

I received the report and examined the point on which the Government was asserting their claim, and, in going through it, noted that the transac-

(Testimony of R. Erickson.)

tion of the sale of the [69] Western Guaranty Company stock was tied in with the sale by Mr. Farrington and the Laurel Investment Company of their holdings in Western Bond and Mortgage Company to O'Flynn, or to the Massachusetts Mortgage Company, and, if I recall, I brought the matter to your attention, and you asked me to make quite a thorough report on the situation.

After I had reviewed the Government's points on which they were asserting their claim for taxes, I made a further examination of the books to determine whether there were any losses not shown by the books that offset the Government's claim, and, in checking back, I noticed the record of the dissolution of the Keystone Finance Company in 1930 and the fact that item had been added to the value of the stock, when there was no transaction occurring to give rise to it. In 1943——

Mr. Reilly: Will you state when in 1930—pardon me—was this transaction?

The Witness: That was in December.

Mr. Reilly: Was that the transaction that Farrington was in?

The Witness: I think it was December 15, 1930, that that Keystone liquidation was recorded. I would not be positive, but I think that was the date.

In the spring of 1943, a client of my office had purchased what is known as the Keystone Ranch from the [70] Bankruptcy Court and he had received an abstract of title to the property, which I had in my office.

(Testimony of R. Erickson.)

The Keystone Finance Company minute book states that stock of that company was paid for by the transfer of some 8920 acres of land, comprising what is known as the Keystone Ranch, for the stock of the Keystone Finance Company in settlement of the original subscription.

I checked back with that abstract that I had and found that the ownership of the Keystone Ranch property, since 1925, had been in the Russell Land and Livestock Company, which corporation was a wholly owned subsidiary of the Western Bond and Mortgage Company.

Q. That was the first time you discovered that situation, I take it?      A. That is right.

Q. And you reported that to Mr. McBride?

A. To Mr. McBride.

Q. Was the matter discoverable from the books alone?      A. I would say no.

Q. The books of the Western Bond and Mortgage Company?      A. That is right.

Q. In regard to the other transaction on which suit was brought, that is, the transaction concerning the stock, the Western Guaranty Company stock, will you state when you first happened to discover that? [71]

A. As I have stated, that was in connection with the examination of this revenue agent's report, in which it is stated that——

Mr. Reilly: Never mind. I object to what was stated in the revenue agent's report.

The Court: Yes.

(Testimony of R. Erickson.)

Q. You mentioned the amended report, revenue agent's report, that you had seen a copy of.

A. Yes, there was a copy or the original, I don't know which.

Mr. Reilly: Is this the amended? Is there more than one of those?

Mr. Teiser: No, there is the original one in evidence, 59. This is 60.

The Court: Here is the other one.

Mr. Teiser: That is not what I want, your Honor.

Q. Is the paper I now hand you, which is marked Pre-Trial Exhibit 60, the amended return or report of the revenue agent which you saw, or a copy of which you saw, and which you referred to previously as having seen?

A. I believe this is, yes. I don't know whether this was the one I saw or whether I saw the copy of it, but that is undoubtedly the one that I saw.

Mr. Teiser: I ask that it be marked with the same number and introduced in evidence.

Mr. Reilly: We make the same objection to this as to the [72] prior one, your Honor, and if it is limited only to the purpose of serving as an excuse for the delayed bringing of the suit, we offer no objection to its use for that purpose.

Mr. Teiser: That is the sole purpose.

Mr. Reilly: We object to it being considered as to the truth of any statements. I do not know what is in it.

The Court: Admitted.

(Testimony of R. Erickson.)

(Copy of letter dated May 7, 1943, from Treasury Department, Washington, D. C., to Collector of Internal Revenue, Portland, Oregon, heretofore marked Plaintiff's Pre-Trial Exhibit 60, was thereupon received into evidence and marked Plaintiff's Exhibit 60.)

Q. Does that amended return give any information at all of the nature that you referred to?

Mr. Reilly: That is objected to. The document speaks for itself in that particular.

The Court: He may tell what his reaction was. The objection is sustained. Put another question.

A. That is not——

Mr. Teiser: Wait a minute.

The Witness: Pardon me.

Q. State what your reaction was to the amended return that you have in your hand, or a copy of it, when you first saw it.

A. That is not the return, Mr. Teiser. [73]

Q. I do not mean the return; the report.

A. It is amended and it is referred to here as a revised report and it does not touch on any of the two matters that I have heretofore mentioned.

Q. Just making some adjustment of the taxes?

A. It gave the company some relief on the originally asserted tax.

Q. Do you know whether or not, after you gave the information to Mr. McBride in connection with these two matters, any further steps were taken by him or by you, at his request, in regard to discov-



(Testimony of R. Erickson.)

ering further facts or verifying the facts that you reported?

A. Yes, there were further steps taken.

Q. What, for instance, without telling the result of those steps?

A. Well, you and myself made a trip to Seattle and to Everett, Washington, to inspect the books of the Western Guaranty Company. We had ascertained that the records of the Western Guaranty Company were had by a party that at one time had been connected with Western Bond.

Q. Do you know whether or not the Referee went up to Seattle with us on that occasion?

A. Not on that occasion. The gentleman's name is Bennett Baldy. [74]

Q. The Referee went up to Seattle with us?

A. No, sir.

Q. Do you know whether the Referee made arrangements to have available the books for examination by you?

A. Which books?

Q. The books of the Western Guaranty Company?

A. Yes, sir.

Q. And you made such examination?

A. Yes, sir.

Q. In regard to further steps, I asked you about the Referee going up to Seattle to make a further investigation in regard to Mr. Baldy and the books of the Western Guaranty Company?

A. I don't recall.

Q. Do you recall the Referee going up with



(Testimony of R. Erickson.)

you and me on some trips, or being there together in Seattle?      A. No, I don't, Mr. Teiser.

Q. Do you know whether or not any examinations were held in regard to verifying the matters which were indicated existed?

A. Yes. Mr. Vester was called up before the Bankruptcy Court under what I think is 21-A examination, and Mr. Farrington was called in on examination.

Q. From your knowledge of the books of the Western Bond and Mortgage Company, particularly in regard to the two matters which have been referred to, concerning which you have been questioned, let me ask you whether or not anyone in authority, [75] having knowledge of the facts, the true facts, in connection with those matters, could have made the entries on the books, or could have caused the entries to be made on the books that were made thereon, without a purpose to deceive and——

Mr. Reilly: That is obviously calling for a conclusion of the witness.

The Court: The objection is sustained.

Mr. Teiser: I do not want to argue with your Honor, but may I state my reasons for asking the question?

The Court: No. I won't hear them.

Mr. Teiser: That is all, Mr. Erickson.

(Testimony of R. Erickson.)

Cross-Examination

By Mr. Reilly:

Q. Mr. Erickson, you were first employed in this matter in 1936?           A. Yes, sir.

Q. And when, in 1936?

A. June or July. I would not be quite sure as to which month, but I think it was the last of June.

Q. On what terms?

A. The terms of my employment were contained in a letter that I addressed to Mr. Teiser or to the Trustee.

Q. Regardless of whether they are contained in a letter, what were the terms on which you were employed?

Mr. Teiser: I object to that, if your Honor please. I take [76] it that the matter referred to is not this particular matter but the matter of The Bank of California.

Mr. Reilly; No, sir.

The Court: Just a moment. I am fully capable of ruling, without letting you do it. I think he may answer as to what the terms of his employment were. He should know.

Mr. Teiser: May I ask your Honor to have the question made a little more specific as to what matter he is talking about?

The Court: Don't answer for the witness. If the witness does not understand the question, he may say so. If you do not understand the question, it don't make any difference.

(Testimony of R. Erickson.)

Mr. Teiser: It is a little hard for me to make an objection unless I know what he is talking about.

The Court: I think you can make objections. Let the witness answer, if he can.

(Pending question read.)

A. I have forgotten now, Mr. Reilly, the exact terms.

Q. Let me ask——

A. May I continue?

Q. Let me ask you whether your employment was—if compensation was fixed for all services you might render in connection with the Western Bond?

A. No, I would not say that, Mr. Reilly. If I might have my letter, I will give you the basis of it.

Mr. Reilly: Will the bailiff please hand the witness pre-trial exhibit 112?

The Witness: The terms under which I was employed were that if funds came into the estate——

Q. From any particular source or from any source?      A. From any source.

Q. Go ahead.

A. If funds came into the estate to the extent of \$10,000 and no more, I would be agreeable to having the Referee fix my fees at whatever he might determine they were worth.

That if an additional \$15,000 came in, that the rate would be for twenty-five days' time, if it ran that much, at \$50 a day and the next twenty-five days at \$25 a day; anything above that, to be \$20 a day.

If an additional \$25,000 were to come into the es-

(Testimony of R. Erickson.)

tate, it would be twenty-five days at \$50 a day; the next twenty-five at \$40 and any additional time at \$25 a day.

And that in the event the funds coming in were to the amount of \$25,000 additional, it was to be fifty days at \$50 a day and the next fifty days at \$35 a day; and that if the total funds coming in exceeded \$100,000, the compensation was to be at \$50 for all time devoted.

I would like to explain the reason for this arrangement.

Q. I am not interested in the reason for the arrangement. I just want to know what the arrangement was. I am not criticizing [78] the arrangement, Mr. Erickson.

A. I should like to explain.

The Court: Wait. Wait just a minute, if you will. Just answer Mr. Reilly's questions.

The Witness: All right, sir.

Q. These moneys which you have detailed, so much per day, those were to be paid for your services?

A. That is right.

Q. And you were to be paid for those services, contingent on the amount of money that came into the estate?

A. That is right.

Q. Regardless of the source from which it came?

A. That is right.

Q. There was no limitation that it had to be the result of your services?

A. No.

Q. You were to get the money, dependent upon the amount of money that came into the estate?

(Testimony of R. Erickson.)

A. That was my understanding when I wrote the letter, yes. As I recall, that was Teiser's understanding. We had talked it over at the time.

Q. How long have you lived in Portland? Were you living here in 1931?

A. I lived in Portland for about six months at one time. I do not live in Portland. [79]

Q. You do not live in Portland? A. No.

Q. I mean Portland or the immediate vicinity?

A. Some fifty years.

Q. Some, what? A. Fifty years.

Q. Fifty years? A. Yes.

Q. And you were taking the Portland papers and have during most of that time?

A. Yes, sir, some twenty-five or thirty or more years; I have read the Portland papers off and on.

Q. You were taking the Oregonian or Journal, or both in 1931? A. Oh, probably.

Q. Did you know nothing of the affairs of the Western Bond prior to that employment in 1936?

A. I did not hear all that question.

Q. Did you, as a citizen of Portland, reading the papers, know nothing of the affairs of the Western Bond and Mortgage Company or the litigation about it prior to 1936?

Mr. Teiser: I object, if your Honor please, to this line of questioning. Whether the witnesses knew or did not know, if he did not impart it to the Trustee, I do not see that it makes any difference. What we are trying to find out now is how the Trustee came to this knowledge and what sources

(Testimony of R. Erickson.)

available to the Trustee there were for knowledge.

The Court: It is of very little weight, I assure you. I think I might as well make my attitude plain. I do not think, as a matter of fact, that something that appeared in the papers has much to do with it, that is, what a person who casually reads the papers has to do with it, or what they think about it or whether it was ever called to their attention. Unless you have some specific reason for looking at a paper, I would say right offhand it would have nothing to do with it.

Mr. Reilly: I was hopeful that the witness would answer that he did know about this.

The Court: He may answer.

A. I had seen references from time to time in the papers of the difficulties of the Western Bond and Mortgage Company, but when they were and when I saw them, I haven't any recollection.

Q. And about litigation about it?

A. Yes, I think I had seen something about some litigation, where they had also sued some other concern.

Q. The Universal?

A. The Universal Bond and Mortgage Company, I think I remember seeing that reference to that suit also.

Q. In respect to this Western Guaranty transaction, that whole transaction was set up on the books and in the Journal and in the minute book, was it not?

A. There is a journal entry recording the dis-

(Testimony of R. Erickson.)

position by the [81] Western Bond and Mortgage Company of the stock in the Western Guaranty Company, for which they were supposed to have received certain assets, and there is a recital of the transaction in the minute book.

Q. And the sole question involved in the Western Guaranty transaction is one of value, is it not, whether the Western Bond in the trade of the assets it got for the stock of the Western Guaranty Company got fair value? That is the whole question, isn't it?

Mr. Teiser: I object to that question as a question of law, if your Honor please.

The Court: The objection is overruled. It is part of the cross-examination.

A. Well, I would not say that that was the sole question involved in there, Mr. Reilly.

Q. What other question was involved?

A. Simultaneous transactions where assets were supposed to have been used in two transactions, one for the sale of the Western Bond and Mortgage Company stock to O'Flynn, and then the simultaneous sale by the Western of its stock in the Western Guaranty Company.

Q. The transactions are set up, are they not, in the books?

A. There is no reference in the books to the sale of the stock to the Western Bond and Mortgage Company by Mr. Farrington and the Laurel Investment Company to O'Flynn or the Massachusetts [82] Mortgage Company.



(Testimony of R. Erickson.)

Q. The minute book shows Mr. Farrington and Mr. McCroskey went out of the company, out of the management, the directorate of the company, and Mr. O'Flynn and his associates came in, do they not?      A. Yes, they do.

Q. And at the meeting held the new officers, the transaction, the trade of the Western Guaranty for certain assets occurred——

A. I do not understand that.

Q. I say, the books do show that at the meeting following Mr. Farrington and Mr. McCroskey going out, the Western Guaranty transaction, the trade of stock of that company for certain assets took place, didn't it?

A. The minute book shows that there was a meeting, I think on December 20, 1930, when Mr. Farrington and Mr. McCroskey, I believe, resigned, and Mr. O'Flynn and someone else took his place.

The minute book recites that there was an adjournment of thirty minutes and in the minutes following this recital of the adjourned meeting is set forth the trade of the Western Guaranty stock for those other items that were supposed to have been received.

Q. That transaction is fully recorded, isn't it?

A. Those items are set forth in the minute book, yes, sir.

Q. And they are referred to again at a later place in the [83] minute book, are they not, some two weeks or so later?

(Testimony of R. Erickson.)

A. Yes, I believe they are. There was a stockholders' meeting later at which this was ratified.

Q. So that the transaction was there for anybody to examine that wanted to?

A. What is recited there is easily read, yes.

Q. Did you ever know about the lawsuit over that transaction that was filed in this court? Did you ever discover anything about that?

A. I never heard of it.

Q. You never heard of it? A. No.

Q. You did not make any appraisal of the assets that the Western Bond received in that transaction, did you? A. No, I did not.

Q. If the Western Bond in fact received assets of greater value than it parted with, why, then, there isn't any case, as far as you know?

A. There isn't any what?

Mr. Teiser: I object to the question, your Honor. The question, obviously, is argumentative. If answered one way, it would excuse his not discovering or, having discovered the situation here, if full value was received for the assets, then he could not have discovered it or, if he discovered anything, it would have been all right. If, on the other [84] hand, he had discovered what he did discover, then he would have reason to bring it to the attention of the Trustee.

The Court: I will listen to the witness.

(Question read.)

A. Well, I think that would be true. If they did actually receive assets of value compared to what

(Testimony of R. Erickson.)

they parted with, they could not question the transaction.

Q. All right, then. I will try to come back to the same question, that the matter in issue here is the value of the assets and not the state of the books.

A. Is that a question?

Q. Yes. Is that a fact?

A. Will you repeat that question?

The Court: Read the question.

(Pending question read.)

Q. Is that right?

Mr. Teiser: I object to that question, if your Honor please, as argumentative and not proper cross examination.

The Court: Overruled. Here is an expert on the stand who has gone over these books. I think I will let him answer.

Mr. Teiser: I tried to qualify him as an expert to answer expert questions, and your Honor would not permit me to do it.

The Court: Yes, I know, but you were asking something different.

A. Well, I think there is considerable question on the [85] transaction, Mr. Reilly. It is true——

Q. All right. You think there is something else involved? A. Yes.

Q. What was it you discovered in these books, in addition to what is them now, in respect to this Western Guaranty transaction?

Mr. Teiser: If your Honor please, I hope you won't object to my objecting so frequently, but it

(Testimony of R. Erickson.)

seems to me that is a question which we are not discussing here, as to what is wrong with the transaction; that the question we have got to determine in connection with what we are here engaged in is whether or not there was any laches on the part of the Trustee. It does not seem to me that the factual situation is what we are trying here at this time, and that is what this question has to do with.

The Court: If I did not think it had some pertinency to what we are trying, I would not admit it. In other words, your objection is that it is immaterial, but I do not think so. I think it is material and proper. He may answer.

A. The material fact is the simultaneous character of these transactions, the use of the assets for two purposes simultaneously and the further fact that the assets were shown to have had no value.

Q. Eliminating the question of value, now, because all of that goes to the merits—— [86]

A. May I correct that? There were some assets there of a minor amount that apparently had value.

Q. Well, I won't go into that part of it. Where did you discover that the transactions were simultaneous?

A. In the revenue agent's report is where it is set forth.

Q. Is it not in the minutes?

A. No, sir. The minutes don't show anything with regard to what the form of payment was to Mr. Farrington and the Laurel Investment Company for the sale of the stock.

(Testimony of R. Erickson.)

Q. It shows that it was Western Guaranty stock that they got?

A. No, sir. There is nothing to show where they got those items or that those were all of the items that were comprised in their exchange, in Farrington and the Laurel Investment Company's exchange with O'Flynn and the Massachusetts Mortgage Company.

Q. Then, as I understand it, the only thing you discovered, outside of the question of value, was that you discovered Mr. Farrington had received these assets, or some of them, for his stock, just a little while before, which he traded for the Western Bond—for the Western Guaranty stock? It was purely a question of time, is that the idea?

A. I couldn't say it was merely a question of time, Mr. Reilly.

Q. And the source of their acquisition of the assets?

A. Partially, yes.

Q. Let me get this straight. The only thing that you claim to [87] have discovered, outside of this question of value, that is shown on the face of the books was that the assets which Mr. Farrington and the Laurel Investment Company traded for the Western Guaranty stock had been acquired by Mr. Farrington or Laurel, or both of them, just a little while before the Western Guaranty transaction took place?

A. Well, I would not say that. It was not just a little while before, apparently, from the records,

(Testimony of R. Erickson.)

which I have seen of it, in reference to it. It was simultaneously with it.

Q. That is the only thing that occurred?

A. That is the main point that I noted on the transaction.

The Court: Finish your answer.

A. Here is where the net worth of the Western Bond and Mortgage Company, represented by the controlling stock, is exchanged for assets that are immediately traded to the Western Bond and Mortgage Company for a part of its assets, not all of them, but part of them, namely the Western Guaranty stock.

The transaction seems to be a case of where the former owners are stepping out and taking with them certain assets of the company, and that the incoming owner put in some supposed assets to cover the book value of what was taken out.

Q. Well, what you have discovered, then, was that the transaction, you claim, was simultaneous instead of an interval [88] having elapsed, and that Farrington and the Laurel Investment Company had acquired the assets that they used in that trade from the new owners of the Western Bond?

A. That is what I found in the revenue agent's report, yes.

Q. And that is what you are relying upon as the newly discovered matter which you found out?

A. Yes.

Q. It is your contention, as I understand it,

(Testimony of R. Erickson.)

that should have been set up on the books of the Western Bond?

A. I do not contend it, Mr. Reilly. I do not contend that.

Q. That is what you have been talking about, something that is not at all on the books of the Western Bond, isn't it?

A. No, I didn't say that.

Mr. Teiser: Objected to. He has never said that.

The Court: Objection sustained.

Mr. Reilly: I do not know what their objection is. May I ask another question?

The Court: Yes.

Q. Was the source from which Mr. Farrington or the Laurel Investment Company acquired the assets that they traded to the Western Bond a proper subject for entry on the books of the Western Bond and Mortgage Company?

A. No, sir.

Q. Was the time that elapsed between their acquisition of those assets and their transfer to the Western Bond and [89] Mortgage Company a matter proper to be set up on the books of the Western Bond?      A. No, sir.

Q. This information that you received about the so-called simultaneous nature of the transaction, that information, as far as you know, was acquired by the revenue agent solely from the books of the Western Bond and Mortgage Company?



(Testimony of R. Erickson.)

A. I would not know where he obtained his information. However, it is set forth in his report.

Q. You could just as easily have found that from the books of the Western Bond as any revenue agent? A. Well I think——

Q. If it was even found from the books?

A. If it were in the books, I presume I would probably have been as well able to find it as the revenue agent, yes.

Q. So, any conclusion which you find in any revenue agent report must be his guesses as to what happened, or some private information he had from some other source, is that right?

A. I just had his statement in there of what had happened. No, we were not able to find that. I was under the impression we had traced it down from another source, but I do not recall now just what was done in that respect.

Q. There was no change in the books from the time the entries were made in 1930 until you examined them in 1943, as far as [90] you know?

A. You say, there was no change?

Q. No change in the Western Bond books.

A. Well, I would not know. I saw the books first in 1936. There were entries on there subsequent to 1930.

Q. I mean, in respect to the Western Guaranty transaction. A. I assume not.

Q. How fully did you examine the books of the Western Bond? A. When?

(Testimony of **R. Erickson.**)

Q. After your employment on what I call a contingency basis?      A. In 1936?

Q. From then on?

A. In 1936, Mr. Teiser came into the office and he had this matter of the exchange of the Keystone Ranch property, and wanted some assistance in connection with it, and engaged me to assist him in tracing out the entries on the books, and to see what other items might be on there that were subject to action by the Trustee.

I checked through most of the transactions of any consequence to see whether they were concerned with what we might call The Bank of California matter, and I noted most of the major items on there. After I had looked into them to see where they fitted in, or if they did fit in with The Bank of California matter, I put them aside and did not refer to them. I think, on no occasion until a long time later. [91]

After The Bank of California matter, and while it was still pending, there was an action against Besson and Brown, Dr. Besson and Mr. Brown, for recovery, and this had arisen before The Bank of California matter.

Q. That was a minor matter, which was settled for \$3,000 or some such amount?

A. I have forgotten myself what it was settled for, but I think that was about it. I do not recall that I had occasion to look into any of these other matters from then until 1943. I looked in the books afterwards, but generally in connection with The

(Testimony of R. Erickson.)

Bank of California matter; it was concerned mainly with their transaction.

Q. As I understand you, you were employed to investigate generally?

A. That is right, in the original employment.

Q. And that your way to be a percentage of everything that came into the estate, regardless of whether you produced it or not?

A. No, I would not say that was it.

Q. I thought you just said so.

A. No, I did not say it was a percentage of what came in that I was to be paid.

Q. That is not right. I am wrong. It is not a percentage of what came in. I beg your pardon. An amount of money which was rated according to the amount that came into the estate? [92]

A. I may say this: I was to be paid a certain rate for my time, depending on how much came into the estate, and whether it came in from my efforts or from someone else's efforts, or if it was paid to my estate if I was not there, it would still be coming to me.

Q. Turning to the Keystone matter, what was it you claim you found that was not in the books?

A. The books recite that the Western Bond and Mortgage Company parted with 40,000 shares of Class "A" common stock of the Consolidated Credit Corporation, for which they were supposed to receive 1500 shares of no par stock of the Keystone Finance Company.

(Testimony of R. Erickson.)

The Keystone Finance Company minute books state that they——

Q. Don't tell what is in the Keystone Finance Company minute book.

A. The Keystone Finance Company minute books state that they had issued their 1500 shares for the 8920 acres comprising the Keystone Ranch, and that this property was owned by E. C. Tapfer and his wife and a man named Snodgrass who were turning it over to the Keystone Finance Company in settlement of this stock subscription.

The abstract of title shows that the Keystone Ranch of 8920 acres, prior to 1925, was owned by a man named Russell, who transferred it to the Russell Land and Livestock Company [93] in 1925, and then, in 1929, the Russell Land and Livestock Company transferred the property to the Keystone Finance Company, but Tapfer and Snodgrass are not shown as being at any time the owners of the land, and the Russell Land and Livestock Company was at all times a hundred per cent subsidiary of the Western Bond and Mortgage Company.

Q. Then, what you discovered was that the abstract showed that Tapfer did not own the land?

A. I had the abstract in my office, and it does not show that Tapfer or Snodgrass ever had any interest in the land, but that that land was in the name of the Russell Land and Livestock Company.

Q. So, you reached the conclusion that the

(Testimony of R. Erickson.)

Western Bond and Mortgage Company owned the property all the time?      A. Yes, sir.

Q. Did you run across any books of the General Loan Company?

A. I think not. The General Loan Company later became the Consolidated Credit Company.

Q. I cannot answer that.

A. It did. It had two or three names.

Q. I think you are mistaken, Mr. Erickson, but you may not be. Go ahead.

A. I think I can give you the names of it.

Q. Are you talking about the Consolidated Credit Corporation?

A. The Consolidated Credit Company. [94]

Q. That is not the stock we are talking about in this case. We are talking about the Consolidated Credit Corporation.

A. No, the stock was the Consolidated Credit Corporation, but the General Loan Company later became the Consolidated Credit Company.

Q. When you say "later" how much later?

A. Well, I think in 1928 it was the General Loan Company, and in about 1929 it was called the Consolidated Lenders of Oregon, and then later in the same year, apparently, the Consolidated Credit Company. It had three names, from the information that I have.

Q. You mean the name was changed?

A. The name was changed.

Q. Legally?

A. I believe that was the way it was done.

(Testimony of R. Erickson.)

Q. In your examination of the books in 1929, did you find a contribution made to the capital of the company of \$200,000 by Mr. and Mrs. Farrington out of their own funds?

A. You say in my examination in 1929?

Q. Of the books of 1929.

A. There is a record in, I think in the forepart of 1929 of where some assets were turned in by Mr. Farrington, which went into the surplus of the company.

Mr. Teiser: I object to the character of that question. I do not know what business it has in this case whatsoever. [95]

The Court: I do not exactly see myself.

Mr. Reilly: I won't pursue it. I was afraid it was starting to get too close to the merits of the situation.

Q. When was it the Government made its claim first against the Western Bond and Mortgage Company?

A. Well, by that you mean what time it was filed with the Bankruptcy Court?

Q. No. It may have been in the Bankruptcy Court, but I mean the time that the Government first made its claim for income tax.

A. It was a claim for the year 1930.

Q. Yes, and when was it?

A. I think the revenue agent's report here gives the date on which the claim was first made.

Q. October 1932?

A. I do not know the date, but if that is the

(Testimony of R. Erickson.)

date on the revenue agent's report that would be the date on which they first asserted the claim.

Q. You say that the original claim disappeared from the files of the Western Bond, or at least was not there?

A. I had never been able to find it in the files.

Q. But when you first examined the files, you found what you call an amended assessment?

A. Yes, the revised report.

Q. You found the revised report when you first examined the [96] files?

A. In 1936, I found a copy of that, either the original or a copy of that revised report.

Q. In the Western Bond files?

A. It was in the Western Bond files.

Mr. Teiser: When you say "original," I take it you mean the original of the amended report?

The Witness: The original of the amended report is right.

Q. That amended report stated an assessment against the Western Bond of, how much?

A. I cannot remember the figures, Mr. Reilly. It is here and shows for itself.

Q. I do not want to take up too much time. Would you say \$40,000 and a penalty of \$2,000, and, of course, interest from 1930, would be about it?

A. Well, I don't remember the figures. It seems to me it was a larger amount than that, but I may be mistaken.



(Testimony of R. Erickson.)

Q. Maybe it is more than that. This revised report——

A. This revised report calls for an additional tax of \$40,772.61, and a penalty of \$2,038.63.

Q. It would carry interest at what rate?

A. Six per cent per annum.

Q. Six per cent per annum, so that there was \$50,000 involved, roughly?

A. At which time? [97]

Q. At the time you first saw it. A. 1936?

Q. Yes. Well, it would be more than that, I suppose.

A. About \$50,000, about twenty-five per cent added.

Q. And the report showed on its face that there was an original back of it, that is, the earlier report?

A. That is right. That led me to ask for the original report.

Q. How did you obtain the original report?

A. Mr. Teiser obtained it for me.

Q. From where? You don't know?

A. I think he got it from the Internal Revenue Bureau Collector's office, or an agent of the Collector's office.

Q. From your experience as an accountant, is a taxpayer entitled to see that?

A. Assuredly.

Q. Any time he asks to? A. Yes, sir.

Mr. Reilly: That is all.

(Testimony of R. Erickson.)

Redirect Examination

By Mr. Teiser:

Q. You do not know what, if any, trouble was had in getting that report, do you?

A. No, I do not.

Q. Some ten years later? A. No, sir. [98]

Q. Mr. Erickson, in regard to this employment that you were questioned about and the letter which was submitted about your employment, your employment, as I read this letter, was to be, the highest rate, \$50 a day. That is the highest rate you were to get? A. Yes.

Q. I might ask you whether \$50 a day is a reasonable charge for accounting work?

Mr. Reilly: That is objected to as incompetent, irrelevant and immaterial. I am not accusing this witness of anything.

The Court: Overruled. He may answer.

A. It is a fair rate.

Q. Under this arrangement, were you to receive more than \$50 a day under any circumstances?

A. No.

The Court: No, he was not.

Q. Let me ask you to look at the last paragraph in the letter and to state whether or not the Trustee was in a position at any time to stop the amount of work? A. He was.

Q. That you were doing? A. Yes, he was.

Q. Under that letter agreement, may I ask you what work you were required or asked to do by

(Testimony of R. Erickson.)

the Trustee? Was it or was it not only in connection with the Bank of California and the [99] Besson and Brown matters?

Mr. Reilly: That is objected to as leading and suggestive.

The Court: Overruled.

A. Those were the items of work that there was to do, but I understood and did look into other matters in the estate, and I did call attention to a transaction concerning the ranch property near Corvallis, and you, I think, and Mr. McBride went down to see about it and decided that nothing could be done about it.

Q. Yes, you did call it to our attention.

A. Yes.

Q. But is or isn't it a fact that what you were employed for at that time was to investigate in regard to The Bank of California matter and the Besson and Brown matter only?

Mr. Reilly: Objected to, your Honor, because the letter speaks for itself.

Mr. Teiser: No, the letter does not speak for itself.

The Court: Now, just a minute.

Mr. Teiser: I beg your pardon, sir.

The Court: I was inclined to think the letter would speak for itself, but everybody has gone into it. Mr. Reilly insists on asking about it, and, in the first place, asking about his interpretation of it, without him seeing the letter, and in view of that fact——

(Testimony of R. Erickson.)

Mr. Reilly: He had the letter before him. [100]

The Court: Oh, no, he did not, at first. You held it in your hand.

Mr. Reilly: Yes.

The Court: And he asked if he could not see it before he answered.

Mr. Reilly: The reason I did that was because your Honor would not let me put that in evidence on cross-examination.

The Court: I know, but you could show it to him.

Mr. Reilly: Probably it should have been shown to him.

The Court: Over the objection of Mr. Teiser, I said that he could answer as to the transaction, irrespective of the terms of the letter. Eventually, you passed the letter over to him. That is what happened.

(Pending question read.)

A. I was not employed to investigate Besson and Brown originally. That came in later. The original employment was in connection with The Bank of California matter and, as I said, that was what I devoted my time to mainly, but I did look into other matters, mostly, however, as to their past connection with Bank of California matters.

Q. Mr. Erickson, when you were employed to handle the tax matter and related matters arising from the tax matters, the result of this suit, were you employed under a separate agreement?

(Testimony of R. Erickson.)

A. Yes, sir.

Q. And your work under this agreement had all been ended at [101] that time?

A. It had ended.

Q. Had you been paid for it fully, as far as you know, before or sometime before?

A. I was paid for it in 1943.

Mr. Reilly: What year was that? 1943?

The Court: 1943 is what he said.

The Witness: In the early part of 1943 is my recollection as to the time of payment.

Q. That was after money came in to the Western Bond from The Bank of California matter?

A. The Bank of California and the sale of the ranch property.

Q. Have you been fully paid for your services, in the last few days we will say, in connection with your services in this matter?

A. I rendered a bill for my time in connection with the report on the tax matter and the preparation of these separate reports, but since August 1943 I think I have put in some time for which I have not been paid. I may say this. I recall that I rendered a bill as of December 31, 1943 and have been paid up to that time.

Q. The basis of your understanding with the Trustee, and approved by the Referee, is definitely the same per day?

A. That is right.

Q. For work done? [102]

A. Yes, sir.

Mr. Teiser: That is all.

Mr. Reilly: That will be all.

(Testimony of R. Erickson.)

The Court: Just a minute. I want to know something about this.

The Court: Q. What is there with reference to the transfer of the Russell Ranch or the Keystone matter that you did not know during the investigation of The Bank of California transactions?

A. Just this, your Honor: The recital is that the Western Bond and Mortgage Company received assets of value for what they parted with. They parted with 40,000 shares of Class "A" common stock of the Consolidated Credit Corporation, which was written up on the books as of the value of \$3 per share of \$120,000, and from sales and other transactions as of the time that seems to have been the value of the stock.

They were supposed to have received 1500 shares of stock in the Keystone Finance Company. The Keystone Finance Company, apparently, never owned anything except 8920 acres of land that comprised the Keystone Ranch.

The Western Bond and Mortgage Company always had title to that same ranch through their ownership of the stock of the Russell Land and Livestock Company.

They received nothing for the 40,000 shares that they parted with, nothing that they had not previously owned. [103]

Q. Was that not all brought out in The Bank of California case?      A. No, sir.

Q. What part was not brought out?

(Testimony of R. Erickson.)

A. The fact that the Keystone Finance Company's stock had been paid for by property that was already the property of the Western Bond and Mortgage Company. I do not recall that anywhere in the record of The Bank of California was that ever touched on.

Mr. Teiser: I think it is a little unfortunate, your Honor, that we use the word "Keystone" in connection with these transactions. I wanted to call it to the attention of the witness at the time that he was being questioned about the stock in the Keystone transaction.

Of course, the Keystone transaction that was involved in The Bank of California case was an entirely different transaction than that involved in this situation. I think that is how your Honor got confused.

The Court: The Russell ranch is involved, I take it?

Mr. Teiser: The Russell ranch was involved. The mortgage on the Russell ranch that was given to The Bank of California was involved in that case, but in this matter the stock of the Keystone Finance Company was said to have turned over to the Western Bond and Mortgage Company for 40,000 shares of stock in the Consolidated, which it owned.

You take, on one side there is 40,000 shares of [104] Consolidated stock. On the other side, there is 1500 shares of the stock in the Keystone Finance. That transaction was one in payment of



(Testimony of R. Erickson.)

the other; had no bearing at all, as your Honor can see, as to the mortgage given on the Russell ranch which happened to be owned at one time by the Russell Land and Livestock Company. Those two transactions were removed, except, unfortunately, it had the name "Keystone" to it. One of them was the stock in the Keystone Finance Company. The other was the mortgage on the ranch which was called "Keystone ranch" which was owned at one time, I think, by the Keystone Company. I am not sure about that.

The Court: But, to a large extent, you examined the ownership of the stock of the Keystone in The Bank of California transaction?

Mr. Teiser: The ownership of the stock of Keystone.

The Court: Yes.

Mr. Teiser: The Ochoco stock was owned by Keystone—not by Keystone, by the Western Bond and Mortgage Company.

The Witness: May I interrupt? The Ochoco stock was never owned by the Western Bond. It was owned by the Massachusetts Mortgage Company.

Mr. Teiser: That is right. I think, your Honor, when you look into the matter—no use of my going into it—that you will find that these two transactions had no connection, one with the other, at all. At any rate, that is the [105] conclusion that we reached.

The Court: The point I am asking the witness

(Testimony of R. Erickson.)

is what portion of this did he not examine in The Bank of California case. I know that this court examined the ownership of the stock in Keystone.

The Witness: That is right, your Honor. It was held by the Western Bond and Mortgage Company, as a result of following this transaction, which occurred in 1929, but the stock in Keystone was paid for by property of the Western Bond and Mortgage Company, held through another subsidiary, the Russell Land and Livestock Company.

The Court: I do not quite see what the purpose of that was, and it is not clear to me what part of this transaction that you are now examining was not clear to you through your investigation of The Bank of California transaction.

The Witness: The point that I did not discover until 1943, your Honor, was the fact that the Russell Land and Livestock Company, the Keystone ranch itself, had been used to pay for the stock in the Keystone Finance Company.

At the time we examined into The Bank of California matter, we did not have the abstract and accepted the record as it was entered on the books. Yet, Tapfer and Snodgrass—Tapfer and his wife and Snodgrass had transferred the Keystone ranch itself, the real property, to the Keystone Finance Company in settlement of its stock. [106]

The Court: Well, I understand this portion about the parties that you have just named, Tapfer and Snodgrass, was not developed in this record, as far as you know?

(Testimony of R. Erickson.)

The Witness: They may have been mentioned in there, in that they were incorporators of the Keystone Finance Company. I think probably that was in the record, but the fact that they did not own the property that it is recited that they paid for the stock is not in the record, as far as I ever recall.

The Court: The Court, in the former case, found at all times the Western had fully owned subsidiaries—the Russell Land and Livestock Company, the Keystone and the Ochoco Farms—and the Referee found on the first hearing that the Keystone was operated and manipulated at all times by the Western Bond and Mortgage Company as its adjunct, subsidiary and agent and for the sole purpose of carrying out its designs and biddings, and was a mere corporate shell, and so forth.

The same state of facts existed as to Ochoco Farms. The development of the Government was commenced in 1929. Title to the Russell ranch was then held by Western in the name of the Russell Land and Livestock Company, a wholly owned subsidiary.

In that year, Keystone was organized and, on December 20, 1929, the Russell Company deeded the Russell [107] ranch to Keystone, apparently no consideration for the transfer, as the value of the stock of the Russell Company from then on is carried as nominal. Then, there are some further developments in that regard that do not relate definitely or

(Testimony of R. Erickson.)

particularly to the mortgages which were under the Court's consideration.

The Witness: The finding that Ochoco was owned by the Western Bond would be incorrect, because they never did own the stock. It was owned by the Massachusetts Mortgage Company. I did not recall a number of these items that you have recited; I don't recall that those were in the record at all, your Honor.

Mr. Teiser: Q. Did you or did you not discover the situation in regard to the 40,000 shares of stock, the Consolidated Company stock, at any time prior to 1943?

A. Oh, yes. I saw the record of the transaction, I think, probably in 1936.

Q. Did it occur to you, from what you discovered at the time, that there was anything improper about that transaction?

A. Not at the time. I don't recall that I had any question of that.

Q. When did you first discover—I think you have stated that.

A. In 1943, when I had the abstract, and I went back to see where they could have had title, that is, Snodgrass and Tapfer, where they had title to the ranch to make the transfer. [108]

Q. Is that the first time you gave any information to the Trustee as to that situation?

A. Yes, sir.

Q. Did that appear in one of the matters connected with the tax situation?

(Testimony of R. Erickson.)

A. No, it did not, but it was one of the matters that I examined into as to a possibility of off-setting——

Q. It was one of the things you discovered in connection with your work in the tax matter?

A. That is right.

Mr. Teiser: That is all.

Mr. Reilly: Q. This minute book of the Keystone Finance Company has been in the files of the Western Bond and Mortgage Company, since you have known anything about those files?

A. I think it was in there in 1936, yes. I am sure it was.

Q. Any investigation of the minutes of the subsidiary corporation would disclose the basis for the stock subscription concerning which you speak?

A. Yes, sir.

Mr. Reilly: That is all.

Mr. Teiser: That is all. That is the plaintiff's case.

The Court: Court will be in adjournment until 10:00 o'clock tomorrow morning.

(Thereupon at 4:00 o'clock p. m., Tuesday, November 28, 1944, an adjournment was taken until 10:00 o'clock a. m. the following day.) [109]

Wednesday, November 29, 1944

Court reconvened at 10:30 o'clock a. m., pursuant to adjournment.

RALPH E. MOODY

was thereupon called as a witness on behalf of the defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Reilly:

Q. Mr. Moody, you are an attorney at law?

A. I am.

Q. A resident, at the present time, of Salem, Oregon? A. Yes.

Q. You have practiced law in the State of Oregon for a good many years?

A. Yes. I think I was admitted in '87.

Q. 1887? A. Yes.

Q. You are a member of the bar of this court?

A. Yes.

Q. And of the Supreme Court of the United States? A. Yes.

Q. Mr. Moody, were you at one time associated with the Attorney General's office of the State of Oregon in some capacity? [110]

A. I was Assistant Attorney General, I think, from about 1933 on to—I think it was March 1938 when I resigned.

Q. In your work as Assistant Attorney General, did you come in contact with the Western Bond and Mortgage Company situation, along in 1934?

(Testimony of Ralph E. Moody.)

A. Yes.

Q. Will you tell how that came about, Mr. Moody?

A. Mr. Charles Goodwin, who was attached to the Corporation Department of the State, came over to the Attorney General's office. I do not remember whether he came directly to me first or whether he went to the Attorney General, Mr. Van-Winkle, and the matter was referred to me.

In any event, I handled the matter, and he stated the Western Bond and Mortgage Company was in a situation that was giving the department a good deal of trouble, and that they had filed an application in Bankruptcy.

I gave the matter considerable thought and study to see what we could do. I found a particular statute in the state that authorized the Corporation Commissioner, if he came to the conclusion that a corporation under his jurisdiction issuing securities was insolvent, or that the collaterals were getting in bad condition, that he could make an order referring the matter to the Attorney General of the State, and the Attorney General, under that statute, would have the right to take such action as the Attorney General wished to, [111] using the name of the State, as might be necessary, and could apply to the Circuit Court of the State for the appointment of a receiver.

I told Mr. Goodwin at the time that he should have the Corporation Commissioner make that order and refer it to our office, the Attorney Gen-



(Testimony of Ralph E. Moody.)

eral's office, and I would see what we could do about it.

Q. Let me ask: In what capacity was Mr. Goodwin?

A. He was Assistant Corporation Commissioner. I forget his title, but he was one of the assistants in the office of the Corporation Department.

So, then, that order was made, and I looked into the matter and, of course, we could not proceed in the State Court because they had filed a petition in Bankruptcy in the Federal Court.

I noticed that that petition had been filed in 1931 and that nothing had been done, no declaration of bankruptcy had been made by the Court, and they seemed to be operating just the same, and the creditors, the bondholders, were writing in, and they would get an answer that they could not do anything about it, that they were in bankruptcy.

Well, I had some little trouble figuring out what to do. The State was not a creditor. I knew something should be done, so I prepared a petition to the Federal Court and asked leave for the State of Oregon to intervene in that Bankruptcy [112] proceeding.

It was a kind of a novel proceeding. I found no precedent for it, but I knew if I could get in there and recite to the Court that the bankruptcy proceeding had been pending before the Bankruptcy Court for some three years and they were still operating and nothing being done, I knew that the Court would inquire into it.

(Testimony of Ralph E. Moody.)

I made that application to intervene—the petition, of course, was on file. I do not know whether you have it in the record in this case or not.

Q. Just a moment. We will find that petition. I hand you herewith pre-trial exhibit 155 and will ask you whether that is a copy of the petition you filed?

A. Yes. It was quite a long petition. That is it. I know I recited the history of the whole thing.

Q. I believe that there is a signature, Mr. Moody, as I recall.

A. I know. I dictated it.

Mr. Teiser: We will admit that that petition was filed.

Mr. Reilly: It is admitted. We offer the petition in evidence.

The Witness: Yes. I signed it in the name of Mr. VanWinkle and myself.

Mr. Teiser: If your Honor please, I object to the introduction in evidence of the intervening petition in bankruptcy, [113] unless it is introduced for the purpose of showing that the facts set forth in the complaint should have been discovered from it, and I take it that there is no such indication in that petition to that effect. I do not believe that the record of this case ought to be encumbered by the admission of this petition at this time.

The Court: The objection is overruled. Admitted.

(Intervening petition of the State of Oregon in re Western Bond and Mortgage Company, having been previously marked and identified as Defendant's Pre-Trial 155 was thereupon

(Testimony of Ralph E. Moody.)

received in evidence and marked Defendant's Exhibit No. 155.)

The Witness: Shall I continue?

The Court: No, just a moment.

Mr. Reilly: Q. Following the filing of that petition—first, did the Court permit you to intervene?

A. Yes, the hearing first was upon the granting of permission for me to intervene, and the Court permitted it, and that was resisted. I think Mr. Agnew, an attorney from Seattle——

Q. For the corporation, the Western Bond and Mortgage Company?

A. Yes. He came in and he resisted, and it was heard before Judge McNary, and Judge McNary permitted it.

Q. And at the same hearing was the question of the appointment of a receiver argued?

A. Yes. He heard it and took the matter under advisement for [114] some little while, as I remember, and then appointed Mr. George McBride.

Q. As receiver?

A. As receiver in the matter, and then the bankruptcy—I think that I had the bankruptcy meeting pressed so they were declared a bankrupt and then——

Q. I think you are ahead of your story, Mr. Moody. The corporation was not declared a bankrupt until December.

A. Well, I knew it was about that time.

Mr. Teiser: When was it declared bankrupt?

The Witness: So——

(Testimony of Ralph E. Moody.)

Mr. Teiser: I withdraw that.

Mr. Reilly: I guess it was November, wasn't it?

Mr. Teiser: I could switch you straight on that matter, if you care to. The petition was——

The Court: If we are going to have any conferences between counsel, I will leave the bench.

Mr. Teiser: If your Honor wants to know the facts, I can give them to you. I am sure that both of these gentlemen will agree to them. If it is not material in this regard, I will sit down.

Q. Well, following the appointment of Mr. McBride, as receiver, did you go to Mr. McBride and consult with Mr. McBride?

A. No, I did not, not until after he was appointed. I did not know whom Judge McNary was going to appoint. [115]

Q. You misunderstood me. After Mr. McBride was appointed——

A. Oh yes.

Q. Then, you went to see him?

A. Yes, I went to see Mr. McBride.

Q. What, if any, discussion did you have with him concerning Western Bond and Mortgage Company matters at that time?

A. Well, I went to see Mr. McBride and I told him that the state was interested, insofar as the state had a moral obligation, and so on, insofar as protecting the assets of this corporation, of the bankrupt corporation. The Attorney General's office also asked the Corporation Department to furnish them a list of all bond holders and creditors, and I dictated the form of the letter to be

(Testimony of Ralph E. Moody.)

sent to all of these bondholders, reciting what the state had done thus far, and I think I solicited them for their powers of attorney in the name of the Attorney General and told them about the United States Court appointing Mr. McBride.

Q. I have the letter here, Mr. Moody. I will ask you if Defendant's Pre-trial 156 is a printed and signed copy of the letter to which you refer?

A. Yes, I signed that letter.

Mr. Reilly: We offer the exhibit in evidence.

Mr. Teiser: I object to the introduction of the letter in evidence. It has no bearing; it is immaterial in this case, the letter soliciting claims of creditors, and has no [116] evidential value in this case.

The Court: Overruled. Admitted.

(Form of letter circulated by the office of the Attorney General, State of Oregon, to creditors of Western Bond and Mortgage Company, having previously been marked and identified as Defendant's Pre-trial 156, was thereupon received in evidence and marked Defendant's Exhibit 156.)

Mr. Reilly: Q. I also hand you defendant's pre-trial 157, and will ask you whether that was the proof of claim and power of attorney which accompanied the letter which you sent to all creditors? A. Yes, that looks like it.

Mr. Reilly: We offer the exhibit in evidence.

Mr. Teiser: Objected to on the same ground.

The Court: The same ruling.

(Testimony of Ralph E. Moody.)

(Form of proof of claim and power of attorney, accompanying Defendant's Exhibit 156 having previously been identified and marked as Defendant's Pre-trial 157, was thereupon received in evidence and marked Defendant's Exhibit 157.)

Mr. Reilly: Q. Then, to go on in a chronological order, what happened next?

A. Well, we received responses to these letters, and then we [117] attended at the meeting of the creditors in Mr. Cannon's office here, then the Referee in Bankruptcy, and Mr. McBride was selected as Trustee.

Q. During the time preceding the filing of your petition for intervention, in other words, during the time preceding July of 1934, was any auditor of the Corporation Department at work on the affairs of the Western Bond and Mortgage Company, other than Mr. Goodwin?

A. Well, Mr. Goodwin was working on the matter and assisting at the time was Alan Brown.

Q. Is that the Alan Brown who has recently been appointed a County Commissioner?

A. That is the Alan Brown who has recently been appointed County Commissioner of this county.

Q. And then, when you discussed this matter with Mr. McBride, following his appointment as receiver—did you have more than one meeting with him?

A. Oh, yes, I had several meetings with Mr. Mc-



(Testimony of Ralph E. Moody.)

Bride. I was quite interested in the matter and I came down here and conferred with him many times, with Mr. Goodwin and Mr. Brown also. He was given the assistance of the auditors and the clerical force of the Corporation Department.

Q. Did you have any conversation with him respecting any civil or criminal liability that might attach to Mr. Farrington in respect to any prosecutions? [118]

A. Well, I told him that he was to look into the matter very carefully and to collect all of the assets that were due.

The corporation had created a lot of subsidiary corporations, and I asked him to particularly look into that thing and to collect—to find out all of the assets that were due the company.

I remember at one particular time there was The Bank of California matter and I understand that since they have had some judgment.

Q. I want to direct your attention particularly—

A. Oh, yes. Then, as far as Mr. Farrington was concerned, I know I called Mr. McBride's attention to the fact, I think, that Mr. Farrington was interested in the original organization of the Western Bond and Mortgage Company, and the records showed that when they first made application to the corporation commissioner for a license to sell these securities he refused it, whereupon he proceeded to institute in the Circuit Court of the



(Testimony of Ralph E. Moody.)

state—to apply for a mandamus compelling the corporation commissioner to accept their filing.

Q. Who was the attorney for the Western Bond at that time?

A. I think Arthur Spencer. Then, there were other transactions in there that looked questionable between Ridgway and——

Q. ——Farrington?

A. And O'Flynn and all of them. As a matter of fact, the whole thing needed a very thorough investigation. [119]

Q. Did you have any discussion with him respecting the lawsuits that had been brought in 1931, charging Mr. Farrington with having defrauded the company?

A. Well, there were some articles published in the newspaper at that time. The newspapers gave a great deal of publicity to this whole business, this whole transaction, and I was watching it very closely, and whenever there was some reference to some proceeding about Mr. Farrington, that was called to Mr. McBride's attention.

Q. By you? A. Yes.

Q. What, if any offers of assistance, in the way of auditing assistance, or accounting assistance, if any, did you make to Mr. McBride?

A. Well, he was to get all of the assistance from the Corporation Department and get all the assistance that he required and Judge Carey, who was then Corporation Commissioner, had an office here in Portland, and they gave him assistance. Mr.

(Testimony of Ralph E. Moody.)

Goodwin, I think, was the main one and Alan Brown, and there were others, so he had all he wanted.

Q. What, if anything, was done as to the payment of a salary to him and expenses?

A. Well, I will explain about that. I really think that Judge McNary called my attention to the fact, when he told me that he had appointed Mr. McBride. He said there did not seem [120] to be much assets in the corporation, and he did not know how it could pay; they could not issue any receiver's certificates.

Anyway, I took the matter up with the Attorney General and the Corporation Commissioner, Judge Carey, and they agreed to pay Mr. McBride \$150 a month.

I heard Mr. McBride's testimony yesterday. I understood him to say that that came on a voucher from the Attorney General's office. He may be right about that, but I think that was paid on a voucher from the Corporation Department.

Q. Well, I do not know how important that is, but my impression is that one department paid a part and the other paid the other part.

A. I know that payment was made of \$150 a month, with the consent of the Attorney General, Mr. VanWinkle, and Judge Carey, who was Corporation Commissioner, and they continued that payment to him until some time after he was appointed Trustee. I do not remember how long. The records will show.

(Testimony of Ralph E. Moody.)

Mr. Reilly: In connection with the testimony of this witness, your Honor, we offer in evidence Defendant's Pre-trial 158. I assume there is no objection.

Mr. Teiser: Yes, I would object to the materiality of the voucher.

The Court: Well, you introduced testimony about it. The objection is overruled. [121]

(Voucher of the State of Oregon, in amount \$490.85—two pages—previously marked and identified as Defendant's Pre-Trial No. 158, thereupon received in evidence and marked Defendant's Exhibit No. 158.)

Mr. Reilly: I also offer in evidence, in the same connection, the voucher marked Defendant's Pre-Trial 160, showing payment up to June 13, 1935.

Mr. Teiser: I make the same objection.

The Court: The same ruling.

(Voucher of the State of Oregon, in amount \$900—three pages—previously marked and identified as Defendant's Pre-Trial 160, thereupon received in evidence and marked Defendant's Exhibit No. 160.)

Mr. Reilly: May I ask if it is admitted that these sums were received?

Mr. Teiser: Yes, it is admitted that those sums were received.

Mr. Reilly: No use encumbering the record with the checks, your Honor.

Q. Was any limitation placed by you on the pur-

(Testimony of Ralph E. Moody.)

poses for which the Corporation Department auditors could be used by Mr. McBride?      A. No.

Q. What were your own statements to Mr. McBride in that connection, if you made any?

A. Just as Mr. McBride testified to yesterday upon the stand. [122] He was told that he would have the assistance of the Corporation Department, its auditors, and everything else that he might require, in order to make a thorough investigation of the affairs of this bankrupt concern.

Q. Do you know whether Arthur Spencer is still alive, still living?

A. He is dead. I know he is dead.

Q. Do you know when he died? If I stated to you, 1942, would that be about right?

A. Well, I would just be guessing at it. I know he is dead, but I do not know the year. I couldn't tell you.

Mr. Reilly: May we agree on that? I checked this morning and found it was May—I have forgotten whether it was the 12th or 18th—1942.

Mr. Teiser: I will admit that. I will agree that he died at the time you say, but I object to the materiality of it.

The Court: The objection is overruled.

Q. Is Judge Carey dead?

A. He is dead, too.

Mr. Teiser: That is admitted.

Mr. Reilly: I do not know the date.

Q. Do you know approximately how long ago he died?      A. No, I don't know.

(Testimony of Ralph E. Moody.)

The Court: I do not know either, but it makes very little difference. [123]

Mr. Reilly: The only question would be whether or not he had some part in this transaction.

The Court: When did you want to prove that he was dead?

Mr. Reilly: Before the beginning of this suit.

Mr. Teiser: I would say he died before that time.

The Court: For the purposes of this case, can't you agree to it?

Mr. Teiser: Yes.

The Court: You say it is immaterial, but the Court overrules your objection. Go ahead.

Mr. Reilly: That is all.

#### Cross-Examination

By Mr. Teiser:

Q. Mr. Moody, just for the purpose of testing your memory, to a certain extent, may I say to you, if you recall it, that you testified Mr. Agnew resisted the petition in bankruptcy?

A. Yes, he did.

Q. The intervening petition?

A. Yes, that is, he resisted the State's application to present its petition.

Q. Did he not consent to the adjudication in bankruptcy?

A. After the Court granted the State's right to intervene and appointed Mr. McBride as receiver, why, he may have consented. I do not know as to

(Testimony of Ralph E. Moody.)

that, but I know that the purpose of the proceeding was to press the bankruptcy proceedings. [124]

Q. You indicated that Mr. Agnew resisted the bankruptcy and I——

A. I misstated myself, then. What I meant to say was that Mr. Agnew resisted the filing of the petition.

Q. You spoke of some papers, some articles being published in the newspapers and, that you saw the articles because you were interested. That was in 1934 that you are speaking of, articles appearing in the papers of 1934, is that right?

A. In answer to that, I wanted to say that I was quite interested in the case. It was a live case for me, and it had been assigned to me, and there was considerable publicity about the State intervening, and there was also considerable publicity in regard to the Western Bond and Mortgage Company, and I instructed all of them that whenever any article appeared in the paper about that to call my attention to it and, while I do not mean to say that I have any independent recollection about reading any article, I know when ever I did I came to Portland and spent several days at a time, talking to Mr. McBride, and his attention was always called to these things.

Q. What I am speaking about is that you referred to newspaper articles published concerning matters which had occurred after you became interested in the bankruptcy proceedings.

A. Yes, after I became interested.

(Testimony of Ralph E. Moody.)

Q. And not before 1934?

A. I, myself, knew nothing about the Western Bond and Mortgage [125] Company until it was referred to me some time in 1934.

Mr. Teiser: That is all.

### Redirect Examination

By Mr. Reilly:

Mr. Reilly: In connection with the question just asked the witness——

The Court: What are you looking for?

Mr. Reilly: I beg your pardon?

The Court: What are you looking for?

Mr. Reilly: I am looking for some exhibit. We offer in evidence, if your Honor please, an article from the Oregonian of July 20, 1934, marked Defendant's Pre-Trial 79, which refers to the civil and criminal liability of Mr. Farrington.

Mr. Teiser: I object to the introduction of the exhibit, on the ground that it is not shown that it was brought to the attention of the Trustee, nor that it was read by him, nor that it is shown that it was exhibited by the witness to the receiver or Trustee.

The Court: Overruled. Admitted.

(Copy of article from the Oregonian of Friday, July 20, 1934, previously marked and identified as Defendant's Pre-Trial 79, was thereupon received in evidence and marked Defendant's Exhibit No. 79.)



(Testimony of Ralph E. Moody.)

The Court: Incidentally, the adjudication of the Western [126] Bond and Mortgage Company as a bankrupt was September 24, 1934, if it is of any interest to anybody.

Mr. Reilly: The Trustee was not elected until December?

The Court: I do not know anything about that. You asked about the date of the adjudication. That is the date of adjudication, if you want it in the record.

Mr. Reilly: Thank you.

Mr. Teiser: What date, your Honor?

The Court: September 24, 1934. Incidentally, there is another matter that I want cleared up, and we might as well do it now. That is that this court has already adjudicated that the Ochoco Farms is a subsidiary of Western, and the witness who was on the stand yesterday said it was not a subsidiary, that it was a subsidiary of Massachusetts Mortgage. Inasmuch as he has already gotten a pretty good fee, owing to the fact that it was a subsidiary, I do not think it lies in him to deny that it was not a subsidiary.

Mr. Teiser: If your Honor will recall, it was shown in the other case that Ochoco fees were paid for by the Western Bond and Mortgage Company, the fees for incorporation, but the stock, I think, was actually held by or supposed to be held by the Massachusetts Mortgage Company, although it was not definitely known whether it was held by the Massachusetts or the Western, but the stock itself

(Testimony of Ralph E. Moody.)

I think was written out, insofar as it could be then done, in the name of Massachusetts. I think that [127] was the situation, but I think it was held by your Honor that Ochoco was never——

The Court: Everybody has cashed in on the whole thing, so I do not think we are going to change it now. As a matter of fact, I know that the stock was issued to Massachusetts, but I made no reference to that in my opinion. I think it makes no difference. I think it was a subsidiary, still, of Western, because it was Western's own employees who organized it, it was Western's money that went to pay for the articles of incorporation, and actually, as a matter of fact, it never was organized.

Mr. Teiser: It never really was organized.

The Court: Never was really organized.

Mr. Reilly: We know nothing about it. That was after Mr. Farrington was out of the Western Bond. I do not know when this corporation was organized, but Mr. Farrington was not connected with Western Bond.

The Court: There is testimony in this record made yesterday by the accountant.

Mr. Reilly: Yes, I remember that, your Honor.

The Court: That is why I wanted it checked up in this record, that the Court does not think that there is any point to it at all, one way or the other. I want to announce my opinion right now, regardless of what has been said, that it was a subsidiary of Massachusetts.

Mr. Reilly: It is not clear to me that that comes

(Testimony of Ralph E. Moody.)

into [128] issue in any way in this proceeding, your Honor, as far as I know.

The Court: I do not think that it does.

Mr. Reilly: Yes.

The Court: But, on the other hand, why, the witness said so twice in his testimony.

Mr. Reilly: Very emphatically.

The Court: That it was a subsidiary of Massachusetts, and I want the record to show that the Court takes knowledge of the Court's opinion here in the record and that Court is not going to permit that testimony to stand unchallenged.

Mr. Teiser: The Court's opinion obviously was correct.

Mr. Reilly: In this same connection, we offer in evidence an article from the Oregonian of July 15, 1931, marked as Defendant's Pre-Trial 76.

Mr. Teiser: 1931?

Mr. Reilly: No, 1934.

Mr. Teiser: Not No. 76, is it?

Mr. Reilly: Have I the wrong one?

Mr. Teiser: Yes.

Mr. Reilly: I will withdraw that offer, your Honor. I am sorry.

I offer Defendant's Pre-Trial 78.

Mr. Teiser: I was under the impression that was just offered, your Honor. May I ask what exhibit was just offered, [129] previous to this last offer?

The Clerk: 79.

Mr. Teiser: I make the same objection.

(Testimony of Ralph E. Moody.)

The Court: The same ruling.

(Copy of article from the Oregon Journal of July 19, 1934, heretofore marked and identified as Defendant's Pre-Trial 78, was thereupon received in evidence and marked Defendant's Exhibit No. 78.)

Mr. Reilly: I offer in this same connection Defendant's Pre-Trial 80, which consists of two articles from the Journal one of August 4, 1934, and the other, August 13, 1934.

Mr. Teiser: I make the same objection, if your Honor please.

The Court: The same ruling.

(Article from Oregon Journal, Saturday, August 4, 1934, and article from the Oregon Journal of Monday, August 13, 1934, previously marked and identified as Defendant's Pre-Trial 80, thereupon received in evidence and marked Defendant's Exhibit No. 80.)

Mr. Reilly: We next offer in evidence Defendant's Pre-Trial 81, being an article from the Oregon Journal dated August 14, 1934.

Mr. Teiser: The same objection, if your Honor please.

The Court: The same ruling.

(Copy of article from Oregon Journal of August 14, 1934, previously marked and identified as Defendant's Pre-Trial 81, thereupon received [130] in evidence and marked Defendant's Exhibit No. 81.)

(Testimony of Ralph E. Moody.)

Mr. Reilly: We next offer in evidence Defendant's Pre-Trial 83, being an article from the Oregonian of August 14, 1934.

Mr. Teiser: The same objection.

The Court: Same ruling.

(Copy of article from the Oregonian of August 14, 1934, previously marked and identified as Defendant's Pre-Trial 83, thereupon received in evidence and marked Defendant's Exhibit No. 83.)

Mr. Reilly: That is all.

(Witness excused.)

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## JOHN R. LATOURETTE

was thereupon produced as a witness on behalf of the defendant and, being first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Reilly:

Q. Mr. Latourette, you are an attorney at law, practicing your profession in the State of Oregon?

A. Yes.

Q. And your offices are here in Portland?

A. Yes.

Q. How long have you been a member of the Bar of the State of Oregon, Mr. Latourette?

A. Since 1908.

(Testimony of John R. Latourette.)

Q. And you are a member of the Bar of this Court?      A. Yes.

Q. And of other Federal Courts?

A. Well, I don't know.

Q. Were you, in any way connected with the bankruptcy proceedings of the Western Bond and Mortgage Company, bankrupt, at any time?

A. I was the attorney of the Trustee at a time.

Q. From what time to what time?

A. Well, I don't know as I can answer that. It was a long time ago.

Mr. Teiser: If your Honor please, if it will help counsel, I will admit that Mr. Latourette was attorney for the Trustee [132] from the time the Trustee qualified, or shortly thereafter, until he withdrew and I took over the case as attorney for the Trustee.

The Witness: I think probably about a year.

Mr. Reilly: Well, we will offer in connection with this testimony Defendant's Pre-Trial 104, being a copy of the order authorizing Mr. Latourette's employment as attorney, dated March 28—filed March 28, 1935.

The Court: Admitted.

(Copy of order authorizing Trustee to retain attorney in matter of Western Bond and Mortgage Company, bankrupt, No. B-16772, in the District Court of the United States for the District of Oregon, previously marked and identified as Defendant's Pre-Trial 104, thereupon

(Testimony of John R. Latourette.)

received in evidence and marked Defendant's Exhibit No. 104.)

Mr. Teiser: No objection.

Mr. Reilly: Q. Mr. Latourette, so that no question of privilege will come up, I will ask you about what knowledge, if any, you had of Western Bond and Mortgage Company matters, or prior litigation, before you were employed as counsel for the Trustee? A. What knowledge?

Q. Yes. A. I don't think I had any. [133]

Q. The questions from now on I think are subject to a claim of privilege. Mr. Latourette, following your employment, did you make any investigation of Western Bond and Mortgage Company matters? A. I did.

Q. What investigations?

Mr. Teiser: Just a second. That will be up to counsel to determine whether he wants to claim privilege.

Mr. Reilly: We will go along and see where we get.

Q. What investigations did you make, Mr. Latourette?

The Witness: Do I have to answer that question, your Honor?

The Court: Are you claiming privilege?

The Witness: I assume it is up to the client to make that claim, is it not?

Mr. Reilly: That would be my understanding.

Mr. Teiser: We hesitate to make such a claim, your Honor, because that attempt puts us in a po-



(Testimony of John R. Latourette.)

sition that we want to hide something. We have taken the position that we have nothing to hide and, so, I hesitate to make the claim.

The Court: I am inclined to think you would have to affirmatively waive it. If not, it is all right for Mr. Latourette to go ahead and testify. I think the obligation is on you. If you want to release him, all right; if you do not want to release him why, say so. It is a question I [134] think your client has to decide.

Mr. Reilly: Yes.

Mr. Teiser: I will discuss it with my client, your Honor.

The Court: Take a short recess.

(Recess.)

Mr. Teiser: So the record may be clear, the Trustee waives the question of privilege on the part of counsel.

Mr. Reilly: Q. Mr. Latourette, what were the things you investigated?

A. When I was appointed and Mr. Cannon was Referee, he told me that Mr. Moody of the Corporation Department had been through this, and to get in touch with him and to collaborate with Mr. Moody, which I did.

Q. I do not care about all of the things you investigated, but what, if any, investigation, did you make concerning Mr. Farrington?

A. Well, we investigated everybody we could from the time I was in there, trying to get some assets. We investigated Mr. Farrington, the Bank

(Testimony of John R. Latourette.)

of California—we had two accountants from the Corporation Department that were in my office a number of times and were in Mr. McBride's office. I was down there. I went through as many records as I could find that pertained to any of the people that were involved in the thing.

I think I was in there for about a year and we [135] concluded that we had a case against The Bank of California, and I prepared a complaint, a rough draft, which I was waiting to submit to Mr. Moody for his approval. I never got to see Mr. Moody or never prepared the complaint in its final form during the time I was representing the Trustee, I think about a year or more.

Q. What, if anything, did you discover about any lawsuits which had been brought concerning the Western Bond and Mortgage Company and Mr. Farrington in 1931?

A. I do not recall anything about that except I know that there had been some lawsuits brought.

Q. What, if any, discussion did you have with Mr. McBride, the receiver, concerning those suits and the matters therein alleged?

A. I don't know. I can't say definitely that I had any particular discussion with Mr. McBride about the particular suits. I know they were trying—we were trying to find out about the whole thing, about Mr. Farrington, as well as all of the others who had been involved in the thing, but as to any particular conversation regarding those things after these, so many, years, I do not recall.

(Testimony of John R. Latourette.)

Q. What about these auditors to what extent were you given a free hand?

A. In using them?

Q. The State Department's auditors? [136]

A. Mr. Moody told them to cooperate with us, and they were available to us at all times, and they had been through the records pretty thoroughly. It seems to me that they had made a pretty general report. I might be mistaken about that, though.

Q. Prior to your ceasing to be the attorney for the Trustee, you had drawn a rough draft of the complaint for the Trustee against the Bank of California?

A. Yes, I had.

Q. Arising out of the Russell ranch transaction?

A. I think that is what it was. It was some \$280,000 deal, as I recall it. I had that drawn for some little time. It was a typewritten draft with some pencil changes I had made.

Q. Do you still have that?

A. Yes, I do. There was some question as to whether we should proceed in the State Court or the Federal Court, and we had drawn the complaint in the State Court. I was not satisfied with the situation and I wanted to talk to Mr. Moody about it.

Q. Was the Keystone Finance Company mixed up somewhat in that lawsuit in connection with which you had drafted your complaint? Do you recall that name?

A. I recall the name. It seems to me it was some subsidiary, either of the Mortgage Company or The

(Testimony of John R. Latourette.)

Bank of California, I have forgotten. Some title, I believe, involved. [137]

Q. What was the nature of the action that you were proposing to prosecute against the Bank of California? Was it a preference or conversion?

A. I think for preference. They had borrowed money from the bank and the bank had taken, as I recall, a farm or something in Eastern Oregon or Eastern Washington, and we were trying to get that back.

Mr. Reilly: You may cross-examine.

Mr. Teiser: No questions.

(Witness excused.)

Mr. Reilly: I will call Mr. Teiser. I dislike doing so, but it is necessary in this case, your Honor.

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### SIDNEY TEISER

was thereupon produced as a witness on behalf of the defendant and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Reilly:

Q. I hand you herewith Defendant's Pre-Trial 107, being a petition for the approval of an agreement between yourself and the Trustee. You are the attorney for the Trustee in this case?

A. Yes, sir.

(Testimony of Sidney Teiser.)

Q. And have been since 1936?

A. I think that was the year, sir.

Q. I have a copy of the petition for your appointment, dated June 10, 1936. A. Yes.

Q. That, you would say, was correct?

A. That is right. I assume so.

Q. Now, Mr. Teiser, referring to paragraph 1 of that petition for the approval of an agreement between yourself and the Trustee as to fees, there occurs the following statement concerning which I wish to interrogate you:

That after the employment of said attorneys, said attorneys made a study of the various documents, books and papers of the Bankrupt and of various transactions which had occurred between the Bankrupt and others, which examination [139] extended over a period of many months; that his attorneys reported to him that there were certain matters and transactions in connection with the affairs of said Bankrupt out of which recovery might be had if diligently prosecuted.

What were those other matters that you had then discovered?

A. What were the other matters?

Q. The matters referred to in that paragraph that you had discovered at the date that this petition was verified, the 14th day of April, 1936?

A. Well, as I recall, this was a petition that—if I am not mistaken, it was a petition for the purpose of bringing suit against The Bank of California, was it not?

(Testimony of Sidney Teiser.)

Q. Well, you are the one to say what an instrument you drew said. Let me ask you this: You had not discovered the bank situation; that had already been discovered prior to your employment?

A. No, it had not, as far as I know—I do not know what you mean by “discover.” The fact was that The Bank of California deal stuck out like a sore thumb throughout the entire records of the case up to the time I came into it, but nothing was being done about it, and we investigated that situation. I investigated it, because I could not understand why something had not been done about it and, because nothing had been done about it, I caused a more thorough examination to be made, thinking that there was something behind it that I did not know. [140]

After it had been done, we went to the Referee and presented the matter to him verbally, and in this petition and, as I recall, also the Besson and Brown situation that we felt should be litigated.

I think also there was another situation that arose in regard to some transfer of property down in Coquille, or down in Corvallis, somewhere in that part of the state. Those were things that we discovered and discovered at that time.

Q. And those were all the things that you are or were referring to in your petition for the approval of a contingent fee contract with yourself?

A. Well, as far as I recall, I took up with them the petition for an allowance of fees in handling the matters, which was to go to the creditors for

(Testimony of Sidney Teiser.)

their approval and which did go to the creditors at their meeting—covered not only things that we had ascertained then but things which we might ascertain, so that we might have authority for prosecuting them thereafter.

Mr. Reilly: We will offer the document in evidence as bearing on some further inquiry that we want to make.

Mr. Teiser: I have no objection to the offer, speaking as an attorney. I have no objection to the offer of the document to show that some investigations were made in regard to some things. If it is offered for the purpose of showing [141] that we handled the matter for a fee, or as to any details of the fee, I think it is immaterial.

The Court: Admitted.

(Copy of petition for approval of agreement, filed April 16, 1937, heretofore marked and identified as Defendant's Pre-Trial 107, was thereupon received in evidence and marked Defendant's Exhibit No. 107.)

Q. An order was made approving that agreement?

A. On that petition, if I recall rightly, a meeting of the creditors was called and the matter presented to the creditors and passed on by the creditors, and after the creditors' meeting was held and this was passed on by them, I think the Referee then approved the order.

Q. I mean, the order was approved?



(Testimony of Sidney Teiser.)

A. The order was made.

Q. The agreement was approved?

A. Well, an order was made for us to handle the cases which might arise at a stipulated fee, to be approved by the Referee, but the creditors consented to that agreement.

Q. Now, at that time, did you or did you not know of the litigation that had been brought in 1931, notably the case of Broekie against the Western Bond and Mortgage Company and C. H. Farrington and others, in this court, and the case of Pape and others against the Western Bond and Mortgage Company, [142] and others, in the Circuit Court of Multnomah County, and the case of Thompson against the Western Bond and Mortgage Company, and others, in the Circuit Court for Multnomah County?

A. I knew of a case of Thompson, or I think that was the case that Allen McCurtain brought.

I saw Allen McCurtain on the street one day—I don't recall whether it was before this time or afterwards, but some time when we contemplated litigation or had just brought litigation in regard to The Bank of California transaction. Allen McCurtain told me that he had been in this case at one time in an endeavor to get a receiver appointed in the State Court, and that he just could not get anywhere with it; that he hoped I would be successful. That is the only data I had. As far as I know, I did not have a complaint and did not particularly know anything about it, except his

(Testimony of Sidney Teiser.)

word that it was a suit for a receivership because of the insolvency of the company.

Q. The suit to which you refer was that of Thompson against the Western Bond and Mortgage Company and I will hand you——

A. If that was the suit.

Q. I will hand you Defendant's Pre-Trial 86, so that you may check that to see if that was the suit Allen McCurtain brought.

A. I knew about it. What is more, I knew it was brought into question during the litigation before the Referee. Yes, this is the complaint signed by Allen McCurtain. I take it this is [143] what he was referring to.

Mr. Reilly: We will offer the document in evidence.

The Witness: I do not recall ever seeing this complaint.

The Court: Admitted.

(Copy of amended complaint in H. C. Thompson, et al., versus the Western Bond and Mortgage Company, et al., in the Circuit Court of Oregon for Multnomah County, heretofore marked and identified as Defendant's Pre-Trial 86, was thereupon received in evidence and marked Defendant's Exhibit No. 86.)

The Witness: I was saying that as I recall in other litigation before the Referee some questions were asked, or cross questions indulged in, in which the suit of Thompson against the Western Bond

(Testimony of Sidney Teiser.)

and Mortgage Company, and perhaps others, was mentioned in that litigation, but I did not, as far as I know, make any investigation of those complaints. I knew that they were not successful. So far as Allen McCurtain's complaint was concerned, that is the Thompson complaint, I was told that it was a suit for a receivership, based on insolvency and impropriety, but I made no investigation of it. I do not think it was necessary or called for. I do not think as it stands now—perhaps I should not testify about what I think.

Q. I do not mind. [144]

A. I want to be fair.

Q. You did not, at that time, know that the litigation brought by Pape and others——

A. At what time?

Q. At the same time you knew of the McCurtain suit, shortly after your employment as attorney?

A. Let me say this: To the best of my memory I heard—Allen McCurtain told me about this suit that he brought, and that was the first I knew about any suits being brought against the Western Bond and Mortgage Company in connection with the receivership; but, then, when we got into the litigation and were trying the Bank of California case before the Referee, I think both Referee Snedecor and Referee Cannon, in one or both of these instances, of these trials, some of these cases were mentioned. I do not know whether the Brockie case was or not, but I am inclined to believe it was mentioned by name.

(Testimony of Sidney Teiser.)

Q. Now, you have read the record and you know perfectly well it was, do you not? A. Sir?

Q. You have read this record and you know perfectly well it was?

A. I don't know at this moment, no. I have given you the best testimony I could. If you say it is in there, I would say it was. My recollection is that it was. If I knew perfectly [145] well it was, I would have said so.

Q. I will ask you if you interrogated the witness Thomas G. Greene as follows and if he made the following answers, in the trial of the case of George McBride, Trustee, against The Bank of California.

I am referring to Plaintiff's Pre-Trial 103, at Page 403 and Page 404. I will read the whole thing, unless you want me to stop, to interject something. This is from the cross examination by Mr. Teiser.

"Q. You say you went up to the court to hear these lawsuits?

"A. I did not hear any of the suits. I heard arguments.

"Q. Did you examine the papers in the case at all?

"A. Some I did, I read the petition in intervention, and one of the later petitions filed by Mr. Mott on behalf of the corporation commissioner in August of 1934.

"Q. That was long after?

"A. It had nothing to do with it at all.

"Q. But before this last move was made you

(Testimony of Sidney Teiser.)

heard the arguments, and I think you said one in the State Court?

"A. In Judge Hall Lusk's department and also before Judge McNary.

"The Court: When were these suits you refer to?

"A. One was commenced in March 1931 and the other one in April 1931, the principal one I think. There were four [146] or five others.

"Q. Did you see the complaints in these cases?

"A. No, only just to see who the parties were.

"Q. You heard the argument but didn't look up the complaints?

"A. Yes.

"Q. Why did you go up to hear the arguments?

"A. I knew it was the company in which O'Flynn was interested.

"Q. Why did you go? Why was that?

"A. Because the Bank of California was trying to get some additional security from the Western Bond and Mortgage Company.

"Q. Did you know of this suit against the Western Bond and Mortgage Company brought by Allen McCurtain?

"A. Yes, that was one of them.

"Q. And another brought by Carl Little?

"A. Yes.

"Q. And the John Brocker——"

That should be "Broekie".

"Q. And the John Brocker suit brought in the United States District Court?

(Testimony of Sidney Teiser.)

“A. Yes.

“Q. Colonel Clark was engaged in this suit, was he not? [147]

“A. There were eight or ten lawyers participating in that argument.”

The suit that you refer to as being the one Colonel Clark participated in was the Brockie case, was it not?

A. Colonel Clark brought the Brockie case, was the attorney in the Brockie case. I saw that from your exhibits, your pre-trial exhibits.

Mr. Reilly: I think it may be agreed that this testimony was taken beginning November 9, 1936, either on that date or within a very few days thereafter.

Mr. Teiser: Whatever date it shows.

Mr. Reilly: The record shows that “On November 9, 1936, at ten o'clock in the forenoon, the above-entitled cause came on for hearing before the Honorable A. M. Cannon, Referee in Bankruptcy, upon an order to show cause directed to the Bank of California.”

Q. Did you ask the questions that I have read to you as having been asked of Thomas G. Greene?

A. Undoubtedly.

Q. Yes.

A. May I go on and explain my purpose in asking them?

Q. I am not interested in that. I want merely to disclose right now the fact that they were asked.

Mr. Reilly: We offer in evidence Defendant's

(Testimony of Sidney Teiser.)

Pre-Trial 62, which is a copy of the complaint in the case of John Brockie [148] against the Western Bond and Mortgage Company, and others, in the United States District Court.

Mr. Teiser: I object to it as immaterial, if your Honor please.

The Court: The objection is overruled. Admitted.

(Copy of complaint in the case of John Brockie versus Western Bond and Mortgage Company, et al., previously marked and identified as Defendant's Pre-Trial No. 62, there-upon received into evidence and marked Defendant's Exhibit No. 62.)

Q. I will ask you whether or not, at the same trial, the Bank of California case, before the Referee in Bankruptcy, in November 1936, the following occurred, Thomas G. Greene being on the witness stand and being interrogated on the cross examination by Mr. Thompson:

"Q. You may now answer the question; read the question.

"Question read as follows: 'Just tell what proceedings you heard, what was done, and what the Court's ruling was on the matter.'

"A. Yes. There was a suit commenced in the State Circuit Court in the spring of 1931 by a man who claimed to be the holder of certain installment certificates secured by mortgage trust indenture or indentures of the Western Bond and Mortgage Company. [149]



(Testimony of Sidney Teiser.)

“Mr. Teiser: I would like to object now to any testimony about any proceedings in the Circuit Court or any court unless the records of court are introduced. I do not think that would be admissible in this proceeding, it would have no bearing here. But I certainly object to his proceeding along that line unless the records are produced, which would be the best evidence of what took place.

“The Court: The testimony may be heard subject to the objection.

“A. It is my intention not to rely on the records or put that in evidence, but to tell what I knew and heard in court. I heard the argument in court and charges made as to the various fraudulent transactions; the receivership was denied, and the court said there had not been sufficient showing made against the Western Bond and Mortgage Company to justify the court to take the management of the corporation out of the hands of its officers and directors. Then again, another suit on the equity of these installment certificates in which attempt was made to effect a receivership. I heard the arguments there by more than half a dozen leading counsel in Portland, Oregon, and Judge McNary’s decision, which was in effect the same as before, that mismanagement of the affairs of the Western Bond and Mortgage Company had not been shown sufficiently to justify taking the management out of the hands of its officers, and he denied the receivership.” [150]

Did that testimony and that colloquy take place?

(Testimony of Sidney Teiser.)

A. Undoubtedly.

Q. Mr. Greene's memory was faulty, of course, because as you know the Brockie case was dismissed, is that right?

A. I do not know whether he was referring to the Brockie case or not. I know that that case was dismissed, but I won't say his memory was faulty. I do not know whether it was or not. If he is human, it probably was.

Q. The Brockie case was filed in March 1931. I show you Defendant's Pre-Trial 108 and I will ask you if that purports to be the examination of witnesses in the matter of the Western Bond and Mortgage Company, Bankrupt, and will ask you if the following occurred as stated in the exhibit——

A. You want to ask me what?

Q. If that is correct?

A. You want me to read this?

Q. If you care to.

Mr. Reilly: Does your Honor intend to go right on through until we finish this? I think we can finish by one o'clock.

The Court: No, until half past twelve.

A. Mr. Reilly, I do not recall the exact language here, but I think on the pre-trial I admitted that the testimony was as set forth here.

Q. Yes.

A. This is a copy of the transcript. [151]

Q. This is copied from the deposition on file in the Referee's office.

(Testimony of Sidney Teiser.)

A. Yes. Well, I take it this pre-trial exhibit must have been admitted.

Q. That is correct.

A. I don't know—I just cannot say. I don't know whether that is the examination that occurred there or not. However, I won't question it.

Q. He, of course, produced the original record, and I think there was an admission to that effect and, while I myself did not do the copying, it was copied and compared.

A. I am willing to admit that that testimony was given, that the questions were asked and the answers given by me—the questions asked by and the answers given by the witness, subject to correction, if it is found that the original testimony shows otherwise.

Mr. Reilly: We will offer the exhibit in evidence, your Honor.

The Court: Admitted.

(Copy of examination of witnesses under Section 21-A, filed May 17, 1937, containing excerpts from the testimony of William G. Brown and Dr. John H. Besson, previously marked and identified as Defendant's Pre-Trial 108, was thereupon received in evidence and marked Defendant's Exhibit No. 108.)

Mr. Reilly: I want to have it, please. I want to ask some more questions concerning it.

Q. The first deposition was that of William G. Brown, taken on the 18th day of February, 1937 and, in connection with the taking of that deposi-

(Testimony of Sidney Teiser.)

tion, were the following questions asked by you and the following answers given:

“Q. You are familiar with the Oregonian, a Portland newspaper?

“A. Oh, yes.

“Q. Read it every day?

“A. Well, yes, I would say so. I always do so when I have been here.

“Q. I show you some articles from the Oregonian. Do you remember reading them or seeing them?

“A. What is the date of that?

“Q. 1931.”

Then, further down:

“Q. You did not know anything about that matter from the early part of the year 1931 down to the latter part of that year?

“A. Nothing.”

What were those newspaper articles appearing in the Oregonian that you handed to the witness?

A. As I recall the articles—and I am rather positive about this—they were exhibits that were introduced in the Bank of [153] California case from the file of the Bank of California. The Bank of California had a credit file, and in this credit file they had data concerning the Western Bond and Mortgage Company for quite a period of time, and among them were newspaper articles or clippings, and the clippings were to the effect that the Western Bond and Mortgage Company were declared not subject to receivership because they

(Testimony of Sidney Teiser.)

were not insolvent or because they were properly handling their affairs.

My purpose in asking those questions——

Q. I am not interested in your purpose. I am interested only in your knowledge.

A. I think it would have a lot to do with it.

Q. Perhaps, but it makes no difference to me.

A. Well I want to state my purpose.

Mr. Reilly: I object to any argument in support of his purpose in asking the questions and the purpose of the inquiry relates only to his knowledge.

A. My purpose——

Mr. Reilly: I think he is not answering the question, your Honor. That is part of my objection.

The Court: Answer the question.

The Witness: Shall I go ahead, your Honor?

The Court: Answer the question. I do not want you to answer something else. You are under examination now, Mr. Teiser. You are not an attorney in the case; you are answering questions. [154]

Q. I think you had finished answering my question. You may cross-examine yourself later.

Mr. Teiser: I will handle it that way so that there will be no controversy.

Q. On that same day, now, which was February 18, 1937, in the examination of John H. Beson, did the following occur, questions by you:

“Q. The newspaper items and articles in the early part of 1931 about the receivership and finan-

(Testimony of Sidney Teiser.)

cial difficulties of the Western Bond and Mortgage Company appearing in the Oregonian and other Portland papers, did you notice them?"

Did you ask that question?

A. Undoubtedly.

Q. What were the newspaper articles you were referring to in the early part of 1931?

A. It was whatever newspaper clippings that were contained in the file of the Bank of California credit file, which was introduced—it was brought up to the Bankruptcy Court here by the Bank of California in the case of McBride, Trustee, against the Bank of California. They were used in the Besson case, or that file was used and these newspaper clippings were, as I recall, newspaper clippings concerning the receivership petitions that had been filed.

Mr. Reilly: Just a moment. We have some newspaper articles here which I would like to put in evidence. Your Honor, I [155] have here copies of all of the newspaper articles that a search could reveal in 1931 concerning the Western Bond and Mortgage Company matters. The first ones started in March and during the month of March. They next appeared in July, I think. I have not brought the girl here who typed them for me, but I could, if necessary, but we offer these three articles appearing in the Oregonian and the Journal, Telegram and Oregonian, March 13th, March 13th and March 14th, 1931, respectively.

First we offer the article which appeared in the



(Testimony of Sidney Teiser.)

Oregonian or, the Journal, rather, which is Defendant's Pre-Trial 63.

Mr. Teiser: I would object to the materiality of it, if your Honor please. As I say, it contains no information of itself of the character which you indicate and, secondly, because, so far as I know, anybody seeing any such articles in this manner——

The Court: The objection is overruled. I might explain to you that I do not think it makes any difference what you knew if, being charged with this duty to investigate and to bring an action, there was at hand information which pointed fairly directly to this matter; and that is the basis on which I am considering the materiality.

Mr. Teiser: I think that is the proper basis, your Honor.

(Copy of article from Oregon Journal of March 13, 1931, [156] previously marked and identified as Defendant's Pre-Trial 63, was thereupon received in evidence and marked Defendant's Exhibit No. 63.)

Mr. Reilly: We next offer Defendant's Pre-Trial No. 64. You have seen this?

Mr. Teiser: Yes, I have seen that.

Mr. Reilly: Is there any use of my submitting them to you each time?

Mr. Teiser: No, sir, not if you are not going to ask me any question about them.

Mr. Reilly: No.

Mr. Teiser: I make the same objection, your Honor.



(Testimony of Sidney Teiser.)

The Court: The ruling is the same.

(Copy of article from Portland Telegram of March 13, 1931, previously marked and identified as Defendant's Pre-Trial No. 64, thereupon received in evidence and marked Defendant's Exhibit No. 64.)

Mr. Reilly: I next offer Defendant's Pre-Trial No. 65.

The Court: The Court will receive this, subject to the same objection.

(Copy of article from the Oregonian of March 14, 1931, previously marked and identified as Defendant's Pre-Trial No. 65, thereupon received in evidence and marked Defendant's [157] Exhibit No. 5.)

The Court: At this time the Court is going to suspend until two o'clock.

(Thereupon at 12:30 P.M. a recess was taken until 2:00 o'clock P.M.) [158]

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Court reconvened at 2:00 o'clock P.M., Wednesday, November 29, 1944, pursuant to recess.

Mr. Reilly: In offering these exhibits, I do not know that there is any occasion for Mr. Teiser being on the witness stand. However, we might let him cross-examine himself now, if he so desires, and then offer the documents later.

The Court: Whatever order you wish to follow.

(Testimony of Sidney Teiser.)

Mr. Teiser: It is kind of a *normal* procedure, but I suppose it will have to be done.

The Court: All right. I think the method to pursue is to ask yourself questions and then give your answers.

Mr. Teiser: I am afraid so.

### SIDNEY TEISER,

having heretofore been duly sworn as a witness on behalf of the defendant, resumed the stand and further testified as follows:

### Cross Examination

By Mr. Teiser:

Q. If you had any copies of newspaper articles for the year 1931, concerning which you were questioning the witnesses Besson and Brown, in the proceedings against those two men, how did you obtain those articles?

Mr. Reilly: Object to that.

A. They were obtained during the process of the suit against [159] the Bank of California. We were endeavoring——

Mr. Reilly: That is not responsive to the question. I object because the witness is not answering his own question.

The Court: I think he is.

Mr. Teiser: I think so.

The Court: Go ahead.

A. We were endeavoring to bring home to the

(Testimony of Sidney Teiser.)

Bank of California knowledge of the fact that the Western Bond and Mortgage Company were insolvent and had a petition in bankruptcy filed against it and we called for their credit file.

There was an adjournment of court had and the Bank of California brought a file, which was a letter sized folder, in which there were letters, credit reports from Bradstreet or Dun, memoranda which they had made, and certain newspaper articles. Just what articles they were, or how many, I do not recall, but there were some newspaper articles in the file, along with these other matters. They presented them, and we questioned the officers of the Bank and its attorney concerning the facts in that file.

Now, when the——

Mr. Reilly: Have you finished your answer to that question?

The Witness: Yes.

Mr. Reilly: All right.

Mr. Teiser: I want to be fair about it.

Q. Was it after you came in possession of or had those newspaper [160] articles when you questioned Mr. Brown and Dr. Besson?

A. Well, it was necessary in that case likewise to show that Besson and Brown, or either or both of them, had knowledge at the time they received certain monies or assets from the Western Bond and Mortgage Company of the insolvency of the Western Bond and Mortgage Company, and for that purpose I obtained the exhibit which was introduced in the case of the Western Bond and

(Testimony of Sidney Teiser.)

Mortgage Company, and which was the credit file, and questioned Dr. Besson and Mr. Brown concerning the newspaper articles, which I recall contained only data concerning the insolvency or the alleged insolvency of the Western Bond and Mortgage Company, and that is, as I recall, what the newspaper articles were in reference to, what I was asking about.

Q. Did you see any newspaper articles at that time, or previous thereto, or at any time prior to the bringing of this suit, which had data in them relating to the facts set forth in the complaint, or matters connected therewith?

Mr. Reilly: That is objected to as calling for a conclusion of the witness. That question calls for a matter of opinion and not the testimony of any fact.

The Court: I think the witness intends to testify to facts. I will permit him to answer.

A. No, I saw no newspaper articles at any time except the newspaper articles that were in the file, which I referred to, and those newspaper articles certainly did not bring to my mind any [161] knowledge or have in them any information in any way relating to the matters as set forth in this complaint, or leading to information concerning those facts.

Mr. Reilly: Is that all?

Mr. Teiser: I am through, sir.

(Testimony of Sidney Teiser.)

Redirect Examination

By Mr. Reilly:

Q. Are the newspaper articles you saw the ones that are now in evidence?

A. I certainly would not know. In fact I have not read the newspaper articles that you handed in evidence, later than the time you presented them on pre-trial, but I would say that they were not the same articles—at least some of them are not the same articles that were in the Bank of California file.

Q. Are you able to point to any article in the papers in Portland in the early part of 1931, referring to any possible insolvency of the Western Bond and Mortgage Company, other than the newspaper articles relating to the Brockie case?

A. You mean these here?

Q. Anywhere. Do you know of any articles in any paper in the City of Portland referring to the question of the insolvency of the Western Bond and Mortgage Company, printed in 1931, early in 1931, before the first of July, except those articles relating to the Brockie case? [162]

A. I do not know of any newspaper articles at all. The only newspaper articles that I recall at all were the articles that I referred to as being the ones in the bank of California file, and I know those are the only newspaper articles that I saw, and these articles I know had to do with the insolvency of the Western Bond and Mortgage Com-

(Testimony of Sidney Teiser.)

pany, because that was the only purpose I could have asked concerning them. That was the issue.

Q. The petition in bankruptcy was filed November 25, 1931, is that correct?

A. I think that is the stipulation that we made.

Q. You do not call that the early part of the year, do you?      A. No, I would not.

Q. No?

A. I was not speaking about the bankruptcy now. I was speaking about insolvency.

Q. What were the articles about insolvency?

A. I have not the slightest idea. All I know is that whatever newspaper articles were in the file, the credit file of the Bank of California, were based on data—that had data in them concerning the insolvency of the Western Bond and Mortgage Company and asking for a receivership.

Q. Did you have in your hand, when you questioned the witnesses, the newspaper articles printed in the early part of 1931?

A. I would only judge that I must have had that file and that in that file must have been newspaper articles in 1931, because [163] the question was relative to that, but I would not have any independent memory.

Q. Please just answer my question. Did you have in your hand any item, or did you have in your hand, when you questioned these witnesses, any newspaper items and articles in the early part of 1931 about the receivership and financial difficulties of the Western Bond and Mortgage Com-

(Testimony of Sidney Teiser.)

pany, appearing in the Oregonian and other Portland papers? Did you have them in your hand?

A. I must have had it in the file, if I referred to that in that testimony.

Q. If you identified it from the newspaper, how did you discover that there was a case such as the Brockie case which was referred to in the cross-examination of Tom Greene, and the Pape case brought by Mr. Little, to which you referred in the same cross-examination? You have already explained the Thompson case, from having a talk with Allen McCurtain. How do you explain your knowing there were any such cases except from the newspapers?

A. My recollection about the matter was that the matter was first brought out by Mr. Thompson when he was questioning Mr. Greene in regard to these newspaper articles and—or, anyhow, these suits, and, naturally, I inquired about them, or, if not that, from some other questioning that arose in that case, because I had no knowledge, I know, about any Brockie suit; in [164] fact, as I recall it, I even miscalled the name, when I questioned him about it.

Q. You miscalled it or the reporter did not get it right?

A. I don't know. It is wrong in there.

Q. I will ask you if, as a matter of fact, you did not bring that matter out yourself in the direct examination of Tom Greene, as a part of the first part of your case?



(Testimony of Sidney Teiser.)

A. No, I do not think so. I do not think that I first questioned Mr. Greene, although, of course, I can be mistaken as to that. It has been seven or eight years ago, six or seven years ago. You have got the record there. I haven't it before me, but I know that the only case I knew that had been brought——

Q. I will take that back, Mr. Teiser. What you asked about was his knowledge of——

A. ——the Thompson case?

Q. No. You did not name the cases then but you did name them later.

A. I am sure, Mr. Reilly, I had no knowledge of those cases until they were brought out by Mr. Greene through the questioning by Mr. Thompson, or otherwise, because if I had any knowledge before that time of those suits I am quite sure that I would have remembered it.

Q. Are you familiar enough with this record now so you think you could point out wherein the names of those cases came into the case except by your own interrogation on cross-examination, [165] found at pages 403 and 404?

A. No, but I suggest that you introduce the record. I won't have any objection to your doing it. If you will do it for that purpose, it can be scanned over by us before argument.

Mr. Reilly: I do not like to introduce the whole record, unless it can be stipulated that it is introduced solely for the purposes of the present hearing. There are a great many statements in there.

(Testimony of Sidney Teiser.)

I do not know all of them, of course. I am not familiar with the case—some of them might be taken against us on the merits, and I do not know the case well enough to be willing to offer the whole record as part of my evidence.

Mr. Teiser: I think if you will look at that record you will find that the first statement about this case was not by me, because I am quite positive I knew nothing about this case until it was brought up by others.

Mr. Reilly: I will say to the court that I have not found that to be a fact. I might not have read it right, but the first reference to the cases being named that I find in there was by yourself, Mr. Teiser. I think that is all.

(Witness excused.)

The Court: There has been so much talk about this Bank of California credit file. Why isn't it in evidence?

Mr. Teiser: I will state to your Honor why. When the case of the Bank of California was concluded, a stipulation was entered into, and the Bank of California withdrew all the exhibits [166] that they introduced, by permission of the court. We did not withdraw any of ours, but the clerk called me up and insisted upon my taking away the records, in view of the fact that we had a stipulation drawn, and that they were cluttering up the office, and the case was closed, so I took the records. The Bank of California had its records and I had mine.

I tried to call Mr. Borden Wood this forenoon to see whether I could get that Bank of California credit file, but I could not get hold of Mr. Borden Wood. I have not had an opportunity to get him, but that is the situation. That particular credit file was withdrawn by the Bank of California.

Mr. Reilly: As far as we are concerned, we had never heard of the credit file until the present time.

The Court: Incidentally, I read it in connection with this other case. I read it very thoroughly and know pretty well what is in it.

Mr. Reilly: I would have liked at least to have been able to have seen it. I do not know what is in it or whether I would want to offer anything that is in it, but if your Honor would permit that matter to be looked into further, it may be that we would want to offer it.

Mr. Teiser: It would be very difficult, if your Honor please. I do not know how near we are to the end of this case.

Mr. Reilly: I would say we are almost through. I have one more witness. [167]

Mr. Teiser: I do not know how long your Honor expects to listen to argument, but if it is not going to be argued immediately, at least, the matter can be held over until I can see if I can get the credit file.

The Court: I think it might be advisable.

Mr. Teiser: If I can get it, of course, I will tender it in evidence.

Mr. Reilly: In the Bank of California matter, your Honor, I had marked as Pre-Trial Exhibits

various parts of that record which seemed to me to be pertinent, at the time of pre-trial. I think they include your Honor's opinion and other matters there. I see somebody has very carefully stapled them together. They are marked there as Pre-Trial Nos. 89 to 102, inclusive. I now offer those parts of the record in evidence.

Mr. Teiser: I object to the introduction, if your Honor please, first, because in regard to many of them they have no evidential value in this phase of the case; secondly, if the record is going to be introduced, I insist upon the whole record being introduced and not a part of it culled out from the whole.

Mr. Reilly: As far as the whole record is concerned, that may be a matter that the plaintiff may desire to do, but I do not think I should be limited; if I want to produce and introduce parts of the record considered pertinent, I do not think I should be called upon to introduce the whole, or vouch for [168] any part of it, other than those portions I have in mind.

The Court: If you wish to offer the rest of it, I will receive it.

Mr. Teiser: I do.

The Court: No question about the transcript? No question about the authentication of the transcript?

Mr. Reilly: Oh, no.

(Copy of amended petition in case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage

Company, previously marked and identified as defendant's Pre-Trial No. 89, thereupon received in evidence and marked Defendant's Exhibit No. 89.)

(Copy of findings of fact in case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial No. 90, thereupon received in evidence and marked Defendant's Exhibit No. 90.)

(Copy of motion of the Bank of California in the case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial No. 91, thereupon received in evidence and marked Defendant's Exhibit No. 91.) [169]

(Copy of affidavit of Harvey N. Black, in the case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial 92, thereupon received in evidence and marked Defendant's Exhibit No. 92.)

(Copy of affidavit of W. Lair Thompson, in the case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial 93,

thereupon received in evidence and marked Defendant's Exhibit No. 93.)

(Copy of opinion of Honorable James Alger Fee, in the case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial 94, thereupon received in evidence and marked Defendant's Exhibit No. 94.)

(Copy of order upon motion to rehear and rehearing, in the case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial 95, thereupon received [170] in evidence and marked Defendant's Exhibit No. 95.)

(Copy of testimony of E. E. Gallagher, in the case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial 96, thereupon received in evidence and marked Defendant's Exhibit No. 96.)

(Copy of testimony of R. Erickson, in the case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial 97, thereupon received in evidence and marked Defendant's Exhibit No. 97.)

(Copy of testimony of William Kennedy, in the case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial 98, thereupon received in evidence and marked Defendant's Exhibit No. 98.)

(Copy of testimony of Thomas G. Greene, in the case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial 99, thereupon received in [171] evidence and marked Defendant's Exhibit No. 99.)

(Copy of colloquy between counsel, in the case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial 100, thereupon received in evidence and marked Defendant's Exhibit No. 100.)

(Copy of testimony of E. F. Munly, in the case of the Bank of California, N.A., versus George McBride, Trustee of Western Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial 101, thereupon received in evidence and marked Defendant's Exhibit No. 101.)

(Copy of testimony of George M. McBride, in the case of the Bank of California, N.A., versus George McBride, Trustee of Western



Bond and Mortgage Company, previously marked and identified as defendant's Pre-Trial 102, thereupon received in evidence and marked Defendant's Exhibit No. 102.)

The Court: What exhibit is that to which you referred, the Bank of California matter?

Mr. Reilly: 103 and 103-A. There are two volumes, Pre-Trial 103 and Pre-Trial 103-A, plaintiff's Pre-Trial Exhibit.

I want to make an objection. The defendant objects [172] to the reception of the whole of the testimony, the whole transcript, insofar as any part of it purports to be substantive evidence against the defendant.

The defendant has no objection to its being considered solely in connection with the question of the statute of limitation and laches.

The Court: The Court will admit it, subject to the objection.

(Transcript of record in the case of the Bank of California, N.A., versus George M. McBride, Trustee of Western Bond and Mortgage Company, a corporation, bankrupt, No. 10,062, consisting of two volumes, previously marked and identified as plaintiff's Pre-Trial Exhibits 103 and 103-A, thereupon received in evidence and marked Plaintiff's Exhibit No. 103 and No. 103-A, respectively.)

Mr. Reilly: The defendant now offers the answer of the Western Bond and Mortgage Company and the Beacon Investment Company in the case

of Brockie against the Western Bond and Mortgage Company, et al on defendant's Pre-Trial 66.

The Court: Just offer them all at once. Is there any objection to that?

Mr. Teiser: I have an objection to that, your Honor, in view of the fact that the complaint has been introduced and these other documents. I assume the objection will be overruled. [173]

The Court: Overruled.

(Answer of Western Bond and Mortgage Company and Beacon Investment Company in the case of John Brockie versus Western Bond and Mortgage Company, and others, previously marked and identified as defendant's Pre-Trial 66, thereupon received in evidence and marked Defendant's Exhibit No. 66.)

Mr. Reilly: The defendant offers defendant's Pre-Trial 67, being the answer of C. H. Farrington in that same case.

Mr. Teiser: The same objection.

The Court: The same ruling.

(Answer of C. H. Farrington in the case of John Brockie versus Western Bond and Mortgage Company, et al, previously marked and identified as defendant's Pre-Trial 67, thereupon received in evidence and marked Defendant's Exhibit No. 67.)

Mr. Reilly: We offer in evidence defendant's Pre-Trial No. 70, being the Court's journal record of the motion of the plaintiff to dismiss the complaint in that same case.

Mr. Teiser: The same objection to that.

The Court: Admitted.

(Journal entry of the District Court of the United States in the case of Brockie vs. Western Bond and Mortgage Company, et al, July 27, 1931, previously marked and identified as defendant's [174] Pre-Trial 70, thereupon received in evidence and marked Defendant's Exhibit No. 70.)

Mr. Reilly: We offer in evidence, if the Court please, defendant's Pre-Trial 69, consisting of a brief filed by the defendant, including the defendant Farrington, to the motion to dismiss.

Mr. Teiser: Object to that as a self-serving statement.

The Court: The objection is overruled.

(Copy of memorandum of defendants Laurel Investment Company, Western Guaranty Company and C. H. Farrington, opposing motion of plaintiff to dismiss in the above case, previously marked and identified as defendant's Pre-Trial 69, thereupon received in evidence and marked Defendant's Exhibit No. 69.)

Mr. Reilly: The defendant offers defendant's Pre-Trial 71, the order dismissing the suit.

Mr. Teiser: No objection.

The Court: Admitted.

(Copy of order dismissing suit in the case of John Brockie versus Western Bond and Mortgage Company, et al, previously marked

and identified as defendant's Pre-Trial 71, thereupon received in evidence and marked Defendant's Exhibit No. 71.)

Mr. Reilly: We offer the following newspaper articles: [175] defendant's Pre-Trial 72, copy of an article from the Oregon Journal of July 13, 1931; defendant's Pre-Trial 73, copy of an article from the Oregonian of July 14, 1931; defendant's Pre-Trial 75, copy of an article from the Oregon Journal of July 14, 1931; and defendant's Pre-Trial 76, copy of an article from the Oregonian of July 15, 1931. Those are all newspaper articles.

Mr. Teiser: Object to the introduction of them, first, because they have no materiality in the matter; not shown to have been brought to the attention of the Trustee, nor that he was chargeable with notice of them.

The Court: Objection overruled. They may be admitted.

(Copy of article from the Oregon Journal of July 13, 1931, previously marked and identified as defendant's Pre-Trial 72, thereupon received in evidence and marked Defendant's Pre-Trial Exhibit No. 72.)

(Copy of article from the Oregonian of July 14, 1931, previously marked and identified as defendant's Pre-Trial 73, thereupon received in evidence and marked Defendant's Exhibit No. 73.)

(Copy of article from the Oregon Journal of July 14, 1931, previously marked and identified

as defendant's Pre-Trial 75, thereupon received in evidence and marked Defendant's Exhibit No. 75.)

(Copy of article from the Oregonian of July 15, 1931, [176] previously marked and identified as defendant's Pre-Trial 76, thereupon received in evidence and marked Defendant's Exhibit No. 76.)

Mr. Reilly: The defendant offers in evidence defendant's Pre-Trial 77, consisting of a motion, with an affidavit, filed in the case of Edward Pape and others versus the Western Bond and Mortgage Company and others, in the Circuit Court of Oregon, for Multnomah County.

Mr. Teiser: May I ask the Court whether it is proposed to introduce the complaint in that case?

Mr. Reilly: I thought I had. I thought it was in the pre-trial exhibits, but I do not find it among my belongings. It is not among the pre-trial exhibits.

I offer this motion for the purpose of showing other suits pending, this motion being in the Pape case.

Mr. Teiser: I object to the introduction of this motion as a part of the record in the Pape case, unless the whole is introduced, and then I would object to the whole on the same ground that I objected to the other.

The Court: Is that a pre-trial exhibit?

Mr. Teiser: Yes, your Honor.

Mr. Reilly: Yes.

The Court: What is the number of it?

Mr. Reilly: No. 77.

The Court: I will amend the pre-trial order to make exhibit [177] 77 the whole file in that case.

Mr. Reilly: I haven't the whole file, your Honor. It would take some little time to make the whole file available. I offer this part of the file.

The Court: All right. Refused.

Mr. Reilly: The defendant offers defendant's Pre-Trial 82, consisting of an article from the Oregonian of August 4, 1934. It seems to be out of order.

Mr. Teiser: What date is that?

Mr. Reilly: August 4, 1934.

Mr. Teiser: What number?

Mr. Reilly: That is No. 82.

Mr. Teiser: Object to it for the same reason, your Honor.

The Court: Admitted.

(Copy of article from the Oregonian of August 4, 1934, previously marked and identified as defendant's Pre-Trial 82, thereupon received in evidence and marked Defendant's Exhibit No. 82.)

Mr. Reilly: We next offer defendant's Pre-Trial 84, being the copy of an article from the Oregonian of August 19, 1931.

Mr. Teiser: The same objection.

The Court: The same ruling.

(Copy of article from the Oregonian of August 19, 1931, previously marked and identified as defendant's Pre-Trial 84, thereupon re-



ceived in evidence and [178] marked Defendant's Exhibit No. 84.)

Mr. Reilly: Defendant's Pre-Trial 85 is the copy of an article from the Oregon Journal of September 10, 1931. We offer that in evidence.

Mr. Teiser: The same objection.

Mr. Reilly: In that connection, your Honor, I stated to your Honor this morning that these constitute all of the newspaper articles in 1931. On further reflection, I should say up until the last article in September. There may have been articles later, I don't know.

The Court: Admitted.

(Copy of article from the Oregon Journal of September 10, 1931, previously marked and identified as defendant's Pre-Trial 85, thereupon received in evidence and marked Defendant's Exhibit No. 85.)

Mr. Reilly: The defendant offers in evidence defendant's Pre-Trial 87, being a copy of an order for the examination of books in the case of Thompson versus Western Bond and Mortgage Company.

Mr. Teiser: I object to the materiality; object to the introduction of this pre-trial exhibit; object to the materiality of it. How could we be chargeable with an order permitting the examination of books by Mr. McCurtain in another case?

The Court: No. 86 is already in?

Mr. Reilly: 86 is in. [179]

The Court: No. 87 is admitted.

(Copy of order of October 6, 1931, in the



case of H. C. Thompson, et al, versus Western Bond and Mortgage Company, et al, in the Circuit Court of Oregon for Multnomah County, previously marked and identified as defendant's Pre-Trial 87, thereupon received in evidence and marked Defendant's Exhibit No. 87.)

Mr. Reilly: We offer defendant's Pre-Trial 88, being copy of an affidavit of Allen H. McCurtain in that same case.

Mr. Teiser: Objected to for the same reason.

The Court: Yes, the same objection; admitted.

(Copy of affidavit of Allen H. McCurtain in the case of H. C. Thompson, et al, versus Western Bond and Mortgage Company, et al, in the Circuit Court of Oregon for Multnomah County, heretofore marked and identified as defendant's Pre-Trial 88, thereupon received in evidence and marked Defendant's Exhibit No. 88.)

Mr. Reilly: We next offer defendant's Pre-Trial No. 106, being the copy of an order appointing or authorizing the employment of Messrs. Teiser and Keller, attorneys for the Trustee.

Mr. Teiser: I do not see what materiality that has.

The Court: Your petition is already in, the petition for appointment. [180]

Mr. Teiser: Did that go in? I thought I was just questioned about it. Immaterial. I make that objection.

The Court: That was No. 104. That was already admitted.

Mr. Teiser: I do not see the materiality. It certainly has no bearing in this case if we were employed as attorneys.

Mr. Reilly: Shows the date when your duties started.

The Court: Objection overruled. It will be admitted.

(Copy of order appointing counsel for Trustee in the matter of Western Bond and Mortgage Company, Bankrupt No. B-16772, previously marked and identified as defendant's Pre-Trial 106, thereupon received in evidence and marked Defendant's Exhibit No. 106.)

Mr. Reilly: We next offer in evidence defendant's Pre-Trial 109, being an order confirming agreement regarding attorneys' fees.

Mr. Teiser: Objected to for the same reason.

The Court: Overruled.

(Copy of order confirming agreement regarding attorneys' fees, previously marked and identified as defendant's Pre-Trial 109, thereupon received in evidence and marked Defendant's Exhibit No. 109.)

Mr. Reilly: We next offer defendant's Pre-Trial No. 110, being an order directing the Trustee to pay certain expenses.

The Court: What is that about? [181]

Mr. Reilly: I beg your pardon?

The Court: What is that about?

Mr. Reilly: The claim was made of lack of funds. This shows that they were in funds.

Mr. Teiser: Let me see that letter, please.

Mr. Reilly: Shows over a thousand dollars.

Mr. Treiser: If your Honor please, this payment of expenses was had in connection with the Besson and Brown case. After the Besson and Brown case was filed and after the compromise was made with Besson and Brown, it shows that some \$1655.65 was paid out for expenses, including attorney's fees, and I just do not see that that has any bearing in this case. The fact is there is no claim here that we did not have any funds until—I mean that we did not have any funds after we recovered in this case. Obviously, we did then have funds.

The Court: What is the date of that?

Mr. Reilly: May 27, 1938.

The Court: It will be admitted.

(Copy of order directing Trustee to pay certain expenses, previously marked and identified as defendant's Pre-Trial 110, thereupon received in evidence and marked Defendant's Exhibit No. 110.)

Mr. Reilly: The next one is defendant's Pre-Trial 111, financial report and statement of the Trustee. It was filed February 24, 1943, but covers the period from December up to [182] that time, showing the financial condition of the estate.

Mr. Teiser: It seems to me, your Honor, while it has no deleterious effect that I know of, it is just cluttering up the record.

The Court: No, I think I won't refuse it on that ground. I think it is material in this way, insofar as it shows that during that period the Trustee was under obligation to investigate, and if he had funds to do it, it may be relevant.

Mr. Teiser: It don't show that.

The Court: I do not know anything about that. There is no ground for its exclusion on the theory that it is immaterial. The objection is overruled.

(Copy of financial report and petition of Trustee, previously marked and identified as defendant's Pre-Trial 111, thereupon received in evidence and marked Defendant's Exhibit No. 111.)

Mr. Reilly: We next offer a letter marked defendant's Pre-Trial 112, being a copy of a letter from Mr. Erickson, accountant, proposing terms of employment, which were accepted.

Mr. Teiser: May I ask whether that is the letter that was handed to Mr. Erickson heretofore?

Mr. Reilly: Yes, and the Court refused to permit its introduction on cross-examination.

The Court: Admitted.

(Copy of letter dated July 20, 1936, from R. Erickson [183] to Sidney Teiser, previously marked and identified as defendant's Pre-Trial 112, thereupon received in evidence and marked Defendant's Exhibit No. 112.) [184]

## ROBERT T. JACOBS

was thereupon produced as a witness on behalf of the defendant and, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Reilly:

Q. What is your occupation, Mr. Jacobs?

A. I am an attorney.

Q. You have been a resident of Portland how long?

A. About twenty-five year.

Q. In connection with what has been called here the Western Guaranty transaction, do you know who handled the legal phase of that for Mr. Farrington?

A. Yes, Mr. Arthur C. Spencer handled it.

Mr. Teiser: I object to the question and answer and ask that the answer be stricken. I don't know the purpose of it. I cannot see the materiality of it.

The Court: I do not see it right now.

Mr. Reilly: The purpose *if*, your Honor, is this: there are two defenses, the statute of limitations and laches, and we are offering this to show that a witness who was familiar with the transaction, an important witness, is now dead.

The Court: Go ahead.

Q. Did you, on behalf of Mr. Farrington, have occasion to consult with Arthur Spencer concerning this transaction?

A. I did. [185]

Q. More than once?

(Testimony of Robert T. Jacobs.)

A. Yes, as I recall some two or three times during the working out of the agreement between Mr. Farrington and the purchasers of his interest.

Q. Who handled the matter on the other side, on the Massachusetts Mortgage Company side?

A. The seller and buyer were brought together by a man by the name of Edmunds, and Mr. O'Flynn represented the purchaser.

Q. I have forgotten whether there is any testimony as to Mr. O'Flynn or not. Is Mr. O'Flynn still living?

A. No, he is not.

Q. I will ask you whether or not he died more than two years ago.

A. Yes. I am informed he died prior to 1942. That is the information that I have.

Mr. Teiser: I object to that testimony as hearsay. I am willing to stipulate——

Mr. Reilly: Do you question his death?

Mr. Teiser: No. I am willing to stipulate that Mr. O'Flynn died during the pendency of the Western Bond and Mortgage Company suits, I mean, during the pendency of the Bank of California suit, originally tried before appeal.

Q. When did that terminate?

A. As I recall, that terminated—I think Mr. O'Flynn died at least five years ago, at least five years ago. [186]

Mr. Reilly: That is sufficient for our purposes. That is all.

(Testimony of Robert T. Jacobs.)

Cross-Examination

By Mr. Teiser:

Q. Mr. Jacobs, you say you know Mr. Spencer was handling this matter on behalf of whom?

A. Of Mr. Farrington.

Q. On behalf of Mr. Farrington?

A. That is right.

Q. In what year?

A. 1930, December, 1930. Let's see, either 1929 or 1930, either December, 1929 or 1930, I do not recall which, but it was one of the two.

Mr. Teiser: That is all.

Mr. Reilly: That is all.

(Witness excused.)

Mr. Reilly: Now, with the exception of that Bank record, that is our case, your Honor.

The Court: Anything further?

Mr. Teiser: We have nothing to offer.

Mr. Reilly: In the argument of this case, I believe it ought to be submitted on briefs. It is too important a matter, there is too much involved, to be handled on oral argument.

Mr. Teiser: I agree with that. If your Honor agrees, both [187] sides will submit briefs. In fact, I have a brief of the law on the question of the statute of limitations. It is written merely for the purpose of briefing the law on that, but I take it your Honor would also want arguments as well as briefs.

Mr. Reilly: I have no objection to oral argument



following the filing of the briefs. We ought to have briefs on the law before the Court in any event.

The Court: My attitude is this: you go ahead and file your briefs and if I feel I want to have oral argument after I read the briefs, I will call on you for it.

Mr. Reilly: Very well, your Honor. What are we going to do about admitting this bank record?

Mr. Teiser: What?

Mr. Reilly: Admitting the files in connection with the bank record.

Mr. Teiser: As soon as I get around to the office, I will call up Mr. Wood, because my understanding was with him that if we needed any of these records they would be available.

Mr. Reilly: What do you say we go to see him together?

Mr. Teiser: Why certainly, I have no objection to that. Certainly. You are welcome to go with me. We will get that record as soon as we can from the Bank of California.

Mr. Reilly: I am wondering if we should set a time now or shall we advise your Honor when we have the evidence?

The Court: I would like to see the file before it is marked [188] as a pre-trial exhibit.

Mr. Teiser: Suppose I notify your Honor within the week as to whether or not the record is available and, if available, we can come up here and offer it in evidence.

Mr. Reilly: And your Honor could then fix a date so we could wind this up.

The Court: Yes. As a matter of fact, I can fix a date now, assuming that you will find it before the end of the week. I can fix a date——

Mr. Reilly: Fix what, your Honor?

The Court: I can fix a date for you to submit briefs now. You don't need to worry about that.

Mr. Reilly: I was thinking more of the time for getting these documents.

Mr. Teiser: I am just wondering, if we are going to write briefs and they are going to have the thoroughness that your Honor would expect, and would have the right to expect, if it would not be better to have the testimony transcribed so that we may be able the better to refer to the testimony and the exhibits. I take it it would be a more intelligent brief, written with the record before us.

(Colloquy between Court and counsel.)

The Court: I assume probably the only thing we can do is to have the testimony transcribed. Somebody may want to appeal. Anyway, we might as well get it in written form so that we can [189] see what was said.

Mr. Teiser: Suppose I suggest that ten days after the transcription is delivered to us the plaintiff's brief be filed and that the defendant have ten days to file his brief, and then let us have a reasonable time to file our reply brief.

The Court: All right, ten, ten and five, after the transcript is in your hands.

(Thereupon the proceedings had in the above entitled cause on to-wit: November 29, 1944, were concluded.) [190]

Wednesday, December 6, 1944

2:00 o'clock P.M.

Court reconvened pursuant to adjournment.

Mr. Reilly: Shall we proceed, your Honor?

The Court: Yes.

Mr. Teiser: If your Honor please, I told your Honor I would have the exhibits which I referred to in my testimony before the Court.

I contacted Mr. Wood and had him obtain from the Bank of California that exhibit. It is here. An order for a subpoena duces tecum was entered, and Mr. Wood is here with the exhibit for the purpose of presenting it to the Court and for the purpose of introducing it as an exhibit in the case.

The Court: You want to put him on the stand?

Mr. Teiser: Yes.

Mr. Reilly: Are you going to examine him, or may I?

Mr. Teiser: I just want to have him identify this.

Mr. Reilly: You may examine him, if you want. I subpoenaed him, but you may examine him if you want to.

Mr. Teiser: I think you did it at my request.

Mr. Reilly: All right. Go ahead. [191]

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## BORDEN WOOD

was thereupon produced as a witness on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

(Testimony of Borden Wood.)

Direct Examination

By Mr. Teiser:

Q. Mr. Wood, did you bring with you the exhibit which was introduced by McBride, Trustee, in the matter of the show cause against the Bank of California, entered in the case of the Western Bond and Mortgage Company, Bankrupt?

A. I have, Mr. Teiser. I brought that.

Q. Was it marked or has it been marked with an exhibit mark?

A. It is marked "Trustee's Exhibit 31."

Q. Sir?

A. It is marked "Trustee's Exhibit 31."

Mr. Teiser: If your Honor please, I offer that in evidence.

Mr. Reilly: There is only one question, your Honor, and that is all of these newspaper articles—I have checked them against those that are in evidence. I think all of the newspaper articles from the Oregonian and Journal that are in evidence—that are in there have already been introduced by me, but I find them different in this particular, that the young lady who copied them did not copy the headlines. I do not know whether your Honor wants us to introduce the file. Mr. Wood said the Bank would like to have the file back.

I have no objection, except I thought that I would [192] tell your Honor we are duplicating these exhibits. I have checked them over, and they are exhibits 63, 65, 73, 76, 78, 80, 83 and 84.

(Testimony of Borden Wood.)

Mr. Teiser: Do I understand what you want to do, or what you are willing to do is to stipulate that the file which has been referred to and which Mr. Wood has here, contains articles which you have introduced in evidence in the trial?

Mr. Reilly: It contains some other things.

Mr. Teiser: Yes.

Mr. Reilly: I do not know how important it is to the Bank to have the file back immediately. I have no objection to the whole file going in, but I ought to explain to your Honor that in some instances there is a duplication.

Mr. Teiser: I am perfectly willing to stipulate with you that this file contains the articles that you have stated, if you have checked them.

Mr. Reilly: I have checked them as well as one person can check.

Mr. Teiser: I am perfectly willing to stipulate that the file which is here, and which is referred to in my testimony, contains the articles that were introduced in evidence by the defendant in this matter. It contains other things and other articles, but it at least contains those.

The Court: Yes.

Mr. Reilly: Yes, and contains the exhibits whose numbers I [193] have indicated. There is that difference between the copies that I have put in and the actual articles, and that is the headlines, and they vary in size. It might be better that this file be in rather than the typewritten copies which do not contain the headlines.

(Testimony of Borden Wood.)

Then, there are some other articles there. I do not know just how important they are—some letters.

That file itself was in the possession of Mr. Teiser at the original trial in the Bank of California case, and also in his possession at the time he examined Mr. Brown and Dr. Besson.

Mr. Teiser: I beg to differ with you. The file was never in my possession. We brought it to the court, the Bankruptcy Court, or the Bank of California did upon our request, when they said they had it, and it was immediately introduced in evidence from the Bank's possession. We never had it in our possession.

Mr. Reilly: There are one or two questions I want to ask Mr. Teiser about the file. Does your Honor desire us to keep the whole file or let the old copies stand?

The Court: You are trying the lawsuit. I am just the Judge. You may introduce it or not, just as you please. I have no interest in that.

Mr. Teiser: I am perfectly willing to stipulate——

Mr. Reilly: I will say this: I think now I am going to [194] offer it in evidence and will ask later, if the Bank desires, for permission to substitute copies of the whole file.

The Court: I am only going to rule on one thing. Mr. Teiser has offered it in evidence. Do you object?

Mr. Reilly: I do not object, no.

(Testimony of Borden Wood.)

The Court: All right. Admitted. I will assure Mr. Wood that whatever the Bank wants to do, we will see that arrangements are made for you to get it.

Mr. Teiser: There is no reason for Mr. Wood waiting?

The Court: Excused.

The Witness: Thank you.

(Witness excused.)

Mr. Teiser: May the exhibits be marked with the next number?

Mr. Reilly: It is not in the pre-trial proceedings.

The Court: I want the pre-trial order.

Mr. Reilly: I think I have a copy of the pre-trial order.

The Court: I want the amended pre-trial order. I will wait and get it. I am sending out for it.

Mr. Reilly: Shall we proceed with questions we want to ask Mr. Teiser?

The Court: Yes, if you wish.

Mr. Reilly: I do not see any particular reason for him coming up on the stand.

The Court: I do. If he is going to testify in the case, he is going to take the witness stand. [195]

Mr. Teiser: No objection, your Honor, at all.



## SIDNEY TEISER,

having previously been duly sworn, was recalled as a witness on behalf of the defendant and was examined and testified as follows:

## Direct Examination

By Mr. Reilly:

Q. The exhibit which has just been received, which was previously marked Trustee's Exhibit 31, which consists of the credit file of the Bank of California relating to the Western Bond and Mortgage Company, that was introduced by you in evidence in the hearing on the show cause order in November, 1936, subsequent to the time you had cross-examined Mr. Greene about the Brockie, Thompson and Pape cases, was it not?

A. I just could not say. It would be impossible for me to remember now. I want to be careful, so I could not say what the order of introduction of the testimony some nine years ago was—eight years ago—but the record is in. The record or the transcript of record that went to the Circuit Court of Appeals, that certainly would show the order in which it was introduced.

Q. You had that credit file in your hands at the time you examined Dr. Besson and Mr. Brown in February, 1937, did you?

A. I don't know. I don't know. What happened was that during the course of the testimony, I think Mr. Greenwood—it was [196] brought out from Mr. Greenwood, who was Manager of the

(Testimony of Sidney Teiser.)

Bank of California or an officer of the Bank, that there might be a credit file. During the recess or while the Court was waiting, he sent for the file and got it and brought it up to the court. It was then introduced by me from his hands in the case.

Q. I am not talking about that.

A. Now, wait a minute. It became an exhibit in the case. I did not, as far as I know, withdraw any exhibits in that case for the purpose of examining Besson and Brown, but I did refer or had reference to the articles that I had seen in that file, because those were the only newspaper articles in 1931 that I saw or had in mind in 1936, or the time of the Besson and Brown trial.

Q. Did you not have in your hands the newspaper articles that you showed to both Dr. Besson and Mr. Brown?

A. I might have, and if I did it was in that file, but I did not withdraw the file from the files of the case.

Q. Did you have any other newspaper articles except those that were in the file?

A. I am quite positive I did not. That is why I testified the newspaper articles that I referred to were in that file. I know I did not make any search of newspaper records for the year 1931 or any time previous.

The Court: The Court at this time amends the pre-trial order, by consent, by adding to plaintiff's exhibits, plaintiff's [197] Exhibit No. 162, the credit file of the Bank of California which has just been introduced.

(Testimony of Sidney Teiser.)

Mr. Reilly: 162, the credit file of the Bank of California?

The Court: Yes, No. 162.

(Credit file of Bank of California, in re Western Bond and Mortgage Company, there-upon received in evidence and marked Plaintiff's Exhibit No. 162.)

Mr. Reilly: 162, credit file, Bank of California.

The Court: Yes.

Mr. Reilly: N. A.?

The Court: I did not put it on.

Mr. Reilly: That is all right. I just want to get an exact copy.

Q. In examining Mr. Brown, you said "I show you some articles taken from the Oregonian." You remember you did so? A. Yes.

Q. Does that refresh your memory as to whether this file, plaintiff's Exhibit 162, was in your hands?

A. No, it don't refresh my memory, except I would say that I showed him the articles and the only articles that I had were in that file and, as a logical consequence, it would have to be that I had the file, but I have no recollection about it at this time as to whether the file was in my hands or not.

Q. You did not take the file apart? [198]

A. Oh no.

Q. Would you say that it contained not only newspaper articles of 1931 but also those of 1934, at all times that you had anything to do with it?

A. I would answer that by saying I did not take the file apart. If I had the file in my hands,

(Testimony of Sidney Teiser.)

it was the whole file. I undoubtedly was referring to the articles, as the context of the examination showed, referring to articles which showed the insolvency of the Western Bond and Mortgage Company. That was the only purpose that could have been asked of Besson and Brown, the only reason for asking Besson and Brown about that. It was necessary to show that they had knowledge of that at the time, whether or not the Western Bond and Mortgage Company was bankrupt or insolvent.

Q. Are you prepared to admit you did read all of the newspaper articles contained in that credit file?      A. Read it?

Q. Not later than February, 1937?

A. I am prepared to admit that I read it?

Q. Are you prepared to admit that you read those articles?

A. I am prepared to deny that I read them.

Q. You are prepared to deny that you read the articles?      A. Absolutely.

Q. Are you prepared to deny you read any of the articles?

A. I know that I read or knew the contents of articles in that [199] file that had reference to the insolvency or bankruptcy of the Western Bond and Mortgage Company.

Q. All right. Show me the articles in 1931 in the file that you admit having read.

A. Well——

Q. Prior to taking the Brown and Besson depositions.

(Testimony of Sidney Teiser.)

A. You want an admission now as counsel, or my recollection as to——

Q. I am asking you as a witness.

A. What?

Q. What are the articles in the file in the credit file, plaintiff's exhibit 162, that you now admit you read prior to taking Besson's and Brown's testimony?

A. All I can say——

Mr. Reilly: I want the file. Will you please hand the credit file to the witness? May we have it, your Honor?

The Court: Yes.

A. Incidentally, may I call attention to the fact that there are some papers in this file that are now in here that were not in there at the time of the 1936 proceedings?

Q. I imagine there are some letters in there, possibly. There are loose articles in there; I think one from the Oregonian, telling about the bringing of this case.

A. I think, as a matter of fact, everything that was in the file at the time is shown by the mark of the Clerk on each page.

Q. I see. All right. [200]

A. From an examination of these newspaper articles, I would have to say, strange as it may seem, that either some of the newspaper articles have been removed from the file, which I doubt, or we did not have this file, because I know, subject to such mistakes that a human mind would make, I know the articles that I handed to Besson and

(Testimony of Sidney Teiser.)

Brown were articles which were concerned with the bankruptcy or insolvency of the Western Bond and Mortgage Company.

Q. In the early part of 1931?

A. I don't know about the early part.

Q. That is what you said in your testimony.

A. I don't know. Whenever they were filed—whenever the articles were issued. The only purpose I could have had, under any circumstances, in the Besson and Brown suit for showing them any newspaper articles, was to show that they knew that the Western Bond and Mortgage Company was insolvent. What other purpose could I possibly have had?

Q. I want to ask you what newspaper articles you showed them.

A. Sir?

Q. You have given one explanation, that the newspaper articles were in the Bank of California credit file?

A. I certainly did.

Q. Do you deny that?

A. Deny it?

Q. Yes. [201]

A. I will say this, in looking over the file here the few minutes that I have looked it over—and I think I have looked it over with reasonable thoroughness—that I do not see any articles in here concerning the filing of a petition against the Western Bond and Mortgage Company, any article in 1931. The other articles that refer to the filing of the petition evidently were in 1934, but the articles, the newspaper articles that are attached to this file which bear inserted dates, either pen or typewriter,



(Testimony of Sidney Teiser.)

for the year 1931, do not seem to be articles referring to the bankruptcy.

Q. There was no bankruptcy started until November, 1931, you know that?

A. Yes, I think that is right.

Q. Now, will you answer my question? Do you deny having shown the articles in that credit file, written in the Oregonian or Journal early in 1931, to either Besson or Brown?

A. So far as reasoning back at this time is concerned, I would say that I did not show these articles in the file, dated 7/14—dated 1931, if I have read that right, to Besson and Brown.

Q. You saw these articles how long ago?

A. What articles?

Q. You saw this credit file with these articles in it, how long ago, recently?

A. Oh, I saw them when I went up to Mr. Wood's office to get Mr. Wood to obtain them from the bank.

Q. When was that?

A. And after he obtained the file from the bank, I went up there.

Q. Saturday morning?

A. Wait a minute. Yes, I think it was Saturday morning of last week.

Q. Having seen these articles, did you look for some other articles in the papers that you might have shown them? A. At that time?

Q. Since Saturday morning?

A. No, sir. [203]



(Testimony of Sidney Teiser.)

Q. You made no attempt to find some other articles that you might have shown to Besson and Brown?

A. When I went up to look at this file?

Q. Answer that question, please.

A. No. You mean, since Saturday did I look for any newspaper articles since Saturday?

Q. Yes.           A. No, I have not.

Q. Did you say you have never seen this file with its present contents, those newspaper articles that are in there?

A. Certainly I have seen it. I have never said I did not see this file. I introduced it in evidence. I had it in my hands. I saw the file, I think, in the preparation of this brief before the Circuit Court of Appeals. I went through the exhibits in all probability and saw the file at that time, but I was not interested in that part of the file at all, in the case on appeal to the Circuit Court of Appeals. I was interested largely in the letter which the bank had in this file that I was supposed to have had in here. I don't know whether that is in here now.

Q. You say you did not examine these newspaper articles that were in that file, back during the trial in 1936?

A. I certainly do not recall examining them in 1936, not the newspaper articles that—not all the newspaper articles that are in this file. I don't recall—— [204]

Mr. Reilly: Would you pass to the witness the

(Testimony of Sidney Teiser.)

first volume of the transcript of testimony, exhibit 103? Would you please show him that?

Q. I will ask you to turn to page 414, to the statement made by you at that time, this being back in November, 1936: "I want to see these newspaper clippings referring to these various suits."

Does that refresh your memory as to whether you looked at them?

A. I don't see that, Mr. Reilly. What page is it?

Q. About the third place your name appears on page 414.

A. What is it?

Q. Where you said "I want to see these newspaper clippings referring to these various suits." Does that refresh your memory as to whether you examined these newspaper clippings?

A. No. I would say that I said "I want to see these newspaper clippings referring to these various suits," and with that in mind I objected to the bank withdrawing the file, to not introducing the file.

Q. You still say, after having read that, that you did not examine these newspaper clippings?

A. Mr. Reilly, all I can say is this: I have no recollection of reading the newspaper clippings, or these newspaper clippings. I have no recollection of reading them. That is all I can say. I may have read them. I certainly have no recollection [205] of reading them.

Q. May I ask whether it was following your reading of these newspaper clippings that you made the contract with the Trustee for a contingent fee

(Testimony of Sidney Teiser.)

to recover certain matters and transactions that you had discovered in the estate?

A. The contract or the order that was made in the case is certainly dated.

Q. The order is dated the 10th day of May, 1937?      A. May, 1937?

Q. Yes. The petition was filed in April, 1937. So, it was not until you had read these newspaper articles that you made this contract with the Trustee?

A. Wait a minute, Mr. Reilly. That cannot be so. I mean the fact cannot be so. I am not talking about the date of the order or even the petition, I don't think. I am sure of this, that Mr. McBride came up to the office——

Q. Are you answering my question or are you going off on something else?

A. I am trying to answer the best I can. I am trying to answer it and be honest.

Q. Go ahead.

A. Mr. McBride came up to our office and asked us whether we would handle for him, as Trustee, certain matters in connection with the Western Bond and Mortgage Company.

Q. That was June, 1936?      A. Sir? [206]

Q. That was in June, 1936, that order appointing you as attorney?      A. Correct.

Q. June, 1936?

A. The order for a contingent fee was almost a year later. In 1936, when the Trustee employed us, we had an understanding with him that we

(Testimony of Sidney Teiser.)

would handle the case, if it met with the approval of the Court, on a basis of a certain amount of recovery, and we suggested to him that, in order that there be no difficulty in this matter or no trouble in the matter, we would prefer to have the matter taken up with the creditors, in view of the fact that there were a thousand or more creditors, and any agreement we made was confirmed by the creditors and authorized by the Court before we undertook the litigation.

Q. What delayed you from June, 1936, until April, 1937, before you first filed your petition for the allowance of your one-third attorney's fees?

A. I don't know—just don't know, Mr. Reilly. It would seem to be the part of wisdom that we should have gotten that petition earlier, but if you say the petition was in 1937, if the date is there, I will take your word for it.

Q. There are some exhibits. You do not need to take my word. There is one other question I want to ask you.

Do you claim that you examined Dr. Besson and Mr. Brown [207] about the contents of newspaper articles, without your having read the newspaper articles?

A. Oh, I don't think that would be true.

Mr. Reilly: That is all.

(Witness excused.)

The Court: Is that all?

Mr. Reilly: That is all, your Honor.

The Court: Have you anything further?

Mr. Teiser: No, sir.

The Court: The cause is now submitted, I take it.

Mr. Reilly: It is, your Honor. We were to brief it, as I recall.

The Court: Yes.

Mr. Reilly: I do not know whether your Honor will permit me or not, but there was a question that I had in mind. It can be asked in the brief, just as well.

The statement was made by Mr. Teiser that he had learned the names of the three lawsuits pending in 1931 from Mr. Thompson's questions earlier in the case on the show cause order back in 1936, I having pointed out to him the place in the testimony where he had used the names and so forth in reference to the three suits.

I have examined the transcript of the testimony rather carefully, and I will ask counsel whether he will refer us to the page in the record where Mr. Thompson referred to these [208] cases by name or by attorneys. Is that a proper question to ask? Maybe he is not prepared to answer.

Mr. Teiser: I am not prepared to answer it, I don't think, Mr. Reilly. I don't think he referred to them by name at that time, before I used the names of Brockie or Pape, whichever one it was. I don't think in that testimony he referred to it. I may recall to you the fact that he examined Mr. Greene and others under 21-A, and that we got into a great deal of discussion in the hallway and other places. It might have been in some other way or in

some other manner that I got the word "Brockie." I don't know. I just don't know.

Mr. Reilly: Not only did you get the word "Brockie" but you also got the fact that Mr. McCurtain had a suit.

Mr. Teiser: Certainly. I testified to that. I testified that I talked to Mr. McCurtain.

Mr. Reilly: And also Little?

Mr. Teiser: I think I talked to Little or Little talked to me.

Mr. Reilly: That is all, now, your Honor.

The Court: Counsel was not under oath in this testimony. He is just making that statement as an attorney?

Mr. Reilly: I beg your pardon?

The Court: He is just making that statement as an attorney?

Mr. Reilly: I assume it would be just as binding on a client. [209]

The Court: I am just calling attention to the fact that when he is not on the witness stand he is not under oath.

Mr. Reilly: I do not want to put him back on the stand all the time. I will waive that part of it.

The Court: The Court now stands adjourned.

(Thereupon the proceedings had in the above entitled cause on, to wit, December 6, 1944, were concluded.) [210]

[Title of District Court and Cause.]

CERTIFICATE

I, Ira G. Holcomb, hereby certify that on, to wit, November 28-29, 1944, and December 6, 1944, I reported in shorthand certain testimony and proceedings had in the above entitled cause and court; that I thereafter caused said shorthand notes to be reduced to typewriting; and that the foregoing transcript, consisting of pages numbered 1 to 210, both inclusive, constitutes a true, full and accurate transcription of said shorthand notes, so taken by me as aforesaid, and of the whole thereof.

Dated at Portland, Oregon, this 8th day of December, 1944.

/s/ IRA G. HOLCOMB.

[Endorsed]: Filed Dec. 12, 1944. [211]



[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS OF

MARCH 30, 1945

Portland, Oregon,  
Friday, March 30, 1945,  
11:35 A.M.

Before: Honorable James Alger Fee, Judge.

Appearances: Mr. Sidney Teiser, attorney for  
plaintiff; Messrs. John F. Reilly and Stephen  
Parker, attorneys for defendant.

Court Reporter: Cloyd D. Rauch.

PROCEEDINGS

The Court: I have gone through this case very carefully and have done a lot of work on it. After I got through I find that it is very nebulous as to what plaintiff's theory of the case is. I have gone through the briefs. Plaintiff has suggested [1\*] two different theories of recovery and the defense has suggested one. Neither of them clicks with the other. The briefs don't even meet. And I went carefully through the pre-trial order and I didn't find any solution of my difficulty there. Now, that has something to do with the statute of limitations, as you all know from briefing this trial, and I want to know that definitely before I say what I think. I called you in to find out what it is all about. In other words, I don't want to take a chance of deciding the case and deciding it on a

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\*Page numbering appearing at top of page of original Reporter's Transcript.

point that is not raised, apparently, in the case. If I go through this thing and then decide it, afterwards somebody might say that I decided it on a theory that nobody had done any talking about, so I want to know what we are talking about. So I think you had better explain, Mr. Teiser, what your idea and theory of the case is.

Mr. Teiser: Well, if your Honor please, it is a little difficult at this moment to get my thoughts back on the situation so hurriedly. I tried to read these briefs over this morning and I hadn't concluded doing so. Your Honor, if I understand you, wants to know on what theory the plaintiff brings this suit?

The Court: Well, now, I can help you out a little. The defendant, in his brief here, suggests that the theory of the case is different from the one that might be drawn from your original brief, and indicates that the defendant was of the [2] opinion that your case was initiated under 67, and you repudiate that in your reply brief and say that you are under Section 70, but not under 70 (e), but, instead, under 70 (a). Now, I want to know what distinction you think you draw between 70 (e) and 70 (a).

Mr. Teiser: Well, I can tell your Honor that right quickly, I think. I endeavored to state that in the reply brief, but 70 (a), as quoted on page 3 of the brief, provides that the trustee of an estate of a bankrupt "shall be vested by operation of law with the title of the bankrupt to all" and then "(4) property transferred by him in defraud of

his creditors;" and "(6) rights of actions arising upon contracts or from the unlawful taking or detention of, or injury to his property"; and, therefore, we are claiming, at least I think I could say among other things that we are claiming—that we are claiming the right by the trustee to title—or the title by the trustee in the property transferred by the bankrupt in fraud of his creditors and title to any action which the bankrupt may have from the taking of its property or injury to its property.

Now, under Section 70 (e) of the Bankruptcy Act—I should say 70 (a)—70 (e) of the Bankruptcy Act,—I haven't the language here, but—

The Court: Will you bring in the sections, both the originals and the new sections.

Mr. Teiser: —but I may say that, quoting from the summary [3] of Section 70 (e) contained in Davis against Wiley, and quoting from the language of the Court,—which the Court says is 70 (e)—but, under Section 70 (e), heretofore quoted, "The trustee may void any transfer which any creditor might have voided." The right is conferred upon the trustee to put him in position to assert the right which a creditor might have and recover, and the trustee is subrogated, and, therefore, under Section 70 (e) of the Act itself it seems to me, as I recall it, 70 (e) gives the trustee a right which he derives from creditors, a right which only the creditor would have—which he would have solely because the creditor had a right. In other words, a trustee acquires two rights, two kinds of rights, under the Bankruptcy Act,—maybe more,

but certainly two. One he acquires through the bankrupt himself by virtue of a title given to him under Section 70 (a); the other he acquires because he stands in the position of a creditor and by virtue of his assuming the position of creditor he acquires certain rights under 70 (e).

The Court: Well, you mean that the bankrupt could have set aside this transfer?

Mr. Teiser: The bankrupt could? Yes, sir.

The Court: You think the bankrupt could set aside——

Mr. Teiser: The Western Bond & Mortgage Company?

The Court: Yes.

Mr. Teiser: Why, certainly I think so. The bankrupt as against its officer, who—if our other portion of our claim is [4] right, we claim that the bankrupt and President of this corporation, in fraud of the corporation, himself transferred or caused to be transferred to himself, by manipulating his voting power, and so forth, certain assets, did it in fraud of the corporation. Now, if there were any corporation stockholders left, or directors left, not only could they have recovered it, but it would have been their duty to recover it, from the President, the property taken by him from the corporation. I can see no reason why the bankrupt could not have recovered, either before—of course, not after bankruptcy, because he would have the title there, but certainly it seems to me that the corporation itself could have recovered this property which was taken from it by the trustee.

Let's take the second cause of action, or we will call it the second claim. There we say that Mr. Farrington caused to be turned over to somebody some forty thousand, I think, shares of stock without getting any payment to the corporation therefor. I can't see why the corporation, if it discovered that situation, when it discovered that situation could not have brought suit, if there was anybody to bring it, to recover.

70 (e) of the Act—I will read it to your Honor. It says, "The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover," and so forth. In other words, under [5] 70 (e) it is an action which is subrogated—in which the trustee is subrogated thereto by creditors of the bankrupt, rather. But here we not only get the right of the bankrupt under 70 (a) by virtue of acquiring title himself, but also we get a title to set aside fraudulent transactions, under either theory, and that is why I say we do not have to confine ourselves to one title,—maybe we have to confine ourselves to one theory—but under 70 (a) the trustee becomes vested with property transferred by the bankrupt in fraud of his creditors, and also becomes vested with the title for the unlawful taking or detention of property or injury to his property.

The Court: Well, of course, I understand that you have the title of the bankrupt property transferred in defraud of creditors, but you are not suing for property transferred in fraud of creditors.

Mr. Teiser: No; I am suing to recover property transferred in fraud of stockholders, creditors,—I think I am. I think I am doing that, also. We are not suing in the name——

The Court: Just a moment. You aren't suing for property at all, as I understand your theory.

Mr. Teiser: We are suing for recovery of——

The Court: You are suing for recovery of damages for wrongful transfer.

Mr. Teiser: That is right.

The Court: That is an entirely different thing.<sup>4</sup> You don't [6] see that right as meaning that they are still the same thing, because they are not the same thing.

Mr. Teiser: No, we are not. We are not suing—your Honor is right about that—we are not suing to recover the thing itself. We are suing to recover damages for the transfer of the thing itself.

The Court—All right, where was the right of recovery of damages initiated?

Mr. Teiser: I didn't hear your Honor.

The Court: I say, where was the right of damages initiated in the first instance, in what person or rem?

Mr. Teiser: Well, prior to the election of the trustee, prior to the bankruptcy, the right to recover was in the bankrupt, in the corporation. After the election of a trustee it became vested in the trustee, as I see it.

The Court: Well, I think that is pretty definite, but that isn't made clear to me by your briefs, because your briefs are talking about Section 70



(a) and Section 70 (e) as though there was a distinction. Now, as I understand, there isn't any distinction on the suit that you are actually bringing. You are bringing, as I understand your present statement, action for recovery of damages for the wrongful transfer of property which initiated in the bankrupt and by virtue of the bankruptcy was transferred to the trustee.

Mr. Teiser: Yes, I think that is true, if I understand your [7] Honor's construction of my remarks, it is true that the action, cause of action, arose first in the corporation at the time of the taking, of the alleged taking.

The Court: Well, taking the matter now, it could not have arisen anywhere else.

Mr. Teiser: Why, I think not. I think not.

The Court: In other words, you do have a choice. You have a choice of saying it is a right that could have been enforced by the creditors and arose in them, or it is a right that arose in the bankrupt and the bankrupt—

Mr. Teiser: Well, I don't go that far. I don't want to quibble with your Honor, but I want to be clear.

The Court: No, I want to understand you, that is what I am trying to do.

Mr. Teiser: I am trying to be clear and to be frank. I think the cause of action first arose in the corporation—that is, a cause of action arose and became vested in the corporation at the time of the taking. Now, that doesn't mean also that creditors of the corporation wouldn't have a right to enforce



that cause of action. In other words, some creditor could have come in at that time if the bankrupt hadn't and enforced that right. Of course, I think your Honor will agree with that.

The Court: I understand that, but that is a derivative right.

Mr. Teiser: That is a derivative right that I think the creditor gets by virtue of the fact that the corporation had it, [S] and I think your Honor is right about that, although it is a little difficult to talk about derivative rights of creditors rather than stockholders. Undoubtedly this is true: If the bankrupt didn't have the right, certainly the creditor would not, under those circumstances, and it is because the bankrupt had the right and didn't assert it that the creditors can come in and assert it.

The Court: Well, we are clear, then, on this proposition, that it was a right which initiated in the bankrupt and was transferred to the trustee by virtue of the bankruptcy.

Mr. Teiser: Now, your Honor again uses a word, I think, a little loosely,—that is “transferred”—perhaps rightly uses that word by virtue of the law, of the Bankruptcy Act. It is an absolute transfer, as I indicated in my brief, not the same kind of transfer that comes from a receivership, for example, but the title itself goes to the bankrupt.

The Court: That is true. That is true, and some of the decisions characterize it as an inherited right.

Mr. Teiser: That is right.

The Court: We are correct about the nature of it.

Mr. Teiser: The nature of it, as I take it, comes because—I can't change that position—comes because, to use names, Farrington acquired or took property belonging to the bankrupt corporation, which the bankrupt corporation had a right to recover. Now, it went to persons, we will say, who it would not be proper [9] to recover it from, or it wasn't their choice to recover it from, so the trustee says, "I, having a right for the bankrupt to recover this property," now proceeds to recover. So undoubtedly it is because of the wrong done to the bankrupt, to the bankrupt first.

Now, we think, also, under that Section 70 (a) he also has a right—also has a right to recover, because he has title to property fraudulently transferred, and having title to property fraudulently transferred he may bring suit to recover that property or the value of that property.

Now, I think he had either or both of those rights, but we are not bringing suit on behalf of creditors; that is, we are not deriving, we are not claiming any derivative right, because of creditors, or, for that matter, because of the stockholders. What we are doing is bringing suit as trustee of the bankrupt because of title given to us by Section 70 (a) to, first, property belonging to the bankrupt but transferred by him in fraud of his creditors, and that certainly was done here; and, secondly, title to property which was unlawfully taken by the bankrupt—or from the bankrupt.

The Court: Now let me ask you about that next section. You say that you have that title under 70 (a). What property do you have the title to?

Mr. Teiser: Title to the particular property which was taken away from us. [10]

The Court: Where is it?

Mr. Teiser: Why, I suppose it has been disposed of by Mr. Farrington. If I recall aright, right on the sudden spur there, if I recall aright, Farrington acquired the stock—the first time, he acquired stock of the Western Guaranty Company. He acquired stock of the Western Guaranty Company. That stock was disposed of by him. At least, we haven't found that he has it.

The Court: Well, after he disposed of it did the bankrupt have any title to it?

Mr. Teiser: The property itself?

The Court: Yes.

Mr. Teiser: It would have if the person to whom it was disposed of had knowledge of its origin and the stocks of it, and so forth, I suppose. But that is not the theory which—we are not claiming that he had. I see what your Honor means, but we are not claiming that.

The Court: The bankrupt didn't have title to the property, and therefore you didn't have.

Mr. Teiser: Oh, he had title at the time of its acquisition?

The Court: Yes.

Mr. Teiser: But at the time of the bankruptcy——

The Court: But at the time of the bankruptcy

the bankrupt didn't have title to it, and therefore you didn't have it.

Mr. Teiser: No, sir, but Section 70 doesn't say that he has [11] title to the property. Section 70 (a) says title to property transferred by him in fraud of his creditors.

The Court: That is an ungodly right, because if the bankrupt didn't have title to the property at the date of the bankruptcy then the trustee didn't get it.

Mr. Teiser: No, we didn't have title to the property. We had title to a cause of action to recover that property.

The Court: Yes, that is just what I am trying to get you down to: The bankrupt didn't own the property, the trustee didn't own the property, and what you had title to was a cause of action which did belong to the bankrupt and which you inherited.

Mr. Teiser: I won't go as far as that, your Honor. I think the bankrupt did have title to the property. At least he did have title to the property unless the person who acquired the property——

The Court: You don't even claim in your complaint or any place in this lawsuit that he had title to the property.

Mr. Teiser: We don't.

The Court: No.

Mr. Teiser: We don't claim it now. We are not suing for title to the property.

The Court: Well, in other words, you are getting down to a position where Section 70 (a) doesn't do you a bit of good.

Mr. Teiser: I can't see that, if your Honor please.

The Court: Well, you tell me how that would do you some good. [12] That is what I am trying to find out.

Mr. Teiser: I am trying to, your Honor, as best I can, and there must be something faulty with me that I can't make my position clear.

The Court: No, there is something faulty in me because I can't understand you.

Mr. Teiser: Well, maybe it is both of us. That section says, "The trustee of an estate of a bankrupt shall be vested by operation of law with the title of the bankrupt to all property transferred by him in fraud of his creditors." Let's take that one piece alone: He is "vested by operation of law with the title of the bankrupt to all property transferred by him in fraud of his creditors." "Transferred by him in fraud of his creditors"—now, what could that mean? It could only mean that property which had already been transferred in fraud of his creditors,—he has a right to title to that property.

The Court: But he hasn't. You have already said that the bankrupt——

Mr. Teiser: The Act says that he has.

The Court: No, it doesn't. It says "the title of the bankrupt." Now, if the bankrupt had no title, obviously a trustee doesn't get anything.

Mr. Teiser: No, "vested by operation of law with the title of the bankrupt to all property transferred by him."

The Court: But if the bankrupt didn't have title to property [13] transferred in fraud of its creditors, obviously the trustee doesn't get anything. Now, if property is transferred in fraud of creditors——

Mr. Teiser: Now, wait a minute. Maybe I see what you are talking about. You said that the title of the bankrupt to property transferred in fraud of his creditors—title of the bankrupt to property transferred in fraud of his creditors. Naturally, if a bankrupt transfers property in fraud of his creditors, the bankrupt, you can well say, hasn't the title to that property ever, could never have, because, having transferred it, the bankrupt having transferred property in fraud of his creditors, could never recover it back, because that is his act and consequently he couldn't recover it back; but the Bankruptcy Act says—it gives him a new life, gives the trustee a new life, it gives him the title of the bankrupt in property which the bankrupt has transferred in fraud of his creditors, which could not have been given to him at the time prior to bankruptcy, because the bankrupt couldn't recover property which he transferred in fraud of his creditors, unless in a circumstance such as this someone fraudulently and improperly caused it to be done, then you bring suit against the person who fraudulently caused it to be done.

Then you come to the second section, which provides that he acquires the title of the bankrupt to "rights of actions arising upon contracts or from



the unlawful taking or detention of, or injury to his property.”

Now, under either one of those, under (4) or (6), I [14] say we have acquired rights to this property or to the damages for the taking of the property, and under section (6) we obtained title to a claim to the property arising by virtue of the detention of or taking of the property.

The Court: If the bankrupt transfers property in fraud of his creditors, that is a voidable transfer.

Mr. Teiser: Yes.

The Court: Against certain persons.

Mr. Teiser: It is also a voidable transfer, yes, sir.

The Court: No, it is a voidable transfer. It isn't also a voidable transfer,—it is a voidable transfer as against a creditor in judgment of an execution returned unsatisfied or, in the instance of a corporation, against a new director.

Mr. Teiser: Oh, we don't even have to have a judgment—well, I won't go into details on that, your Honor.

The Court: Well, that is a common law rule, I am saying.

Mr. Teiser: Under the Bankruptcy Act the mere transfer in fraud of creditors—

The Court: I am just talking about the bankrupt,—the bankrupt's title is there, but voidable under certain circumstances. Now, then, if the assignee in fraud of creditors makes a transfer to a purchaser in good faith and for value, then the bankrupt has no title.



Mr. Teiser: Has no title to the property, but he has title to the right—— [15]

The Court: That is just the point I am making now. I am trying to get you so the point is clear, that you recognize that there is a difference between the title to the property and the title to the cause of action. After the assignee in fraud of creditors has himself sold the property to a bona fide purchaser for value, then the bankrupt has no title whatsoever, or the transferor in fraud of creditors has no title whatsoever to the property.

Mr. Teiser: At least, he couldn't recover it, I will say that.

The Court: No, he has no title.

Mr. Teiser: Probably has no title to it, because if he couldn't recover it it wouldn't do him any good to have title to it.

The Court: Well, I just say he has no title to it.

Mr. Teiser: Well, I will just say I will go along with you.

The Court: That is what I am trying to get you down to. If that isn't a valid position, I want you to show me why, and, furthermore, I want you to bring me some authorities. Now, I have made extensive search on this subject, but I have found no authority that supports the position that he has any title.

Mr. Teiser: Title to the property, you are speaking of?

The Court: Title to the property. He still has a cause of action. The bankrupt—for instance, a

bankrupt corporation—or the transferor in fraud of creditors is in the position of [16] the corporation, and the transferor still has a right of action against the transferee.

Mr. Teiser: I think that is right, and I think this section (6) was put in the Act because they didn't want somebody to come in and claim that because the property happened to be transferred to a bona fide purchaser for value and couldn't recover for that reason, that he couldn't recover damages for the same.

The Court: All right, now——

Mr. Teiser: I think I tried to set that forth in pages 2 to 6 of my brief. Maybe I didn't do it very clearly.

The Court: All right,—I wasn't sure that we were on the same ground. That is the thing I am trying to find out, whether we are on the same ground.

Mr. Reilly: Why, it has seemed to us all along, your Honor, that counsel has switched theories. The whole of the pre-trial order is based upon the proposition that the statute of limitations is two years from the time of discovery or the time when the alleged fraud should have been discovered. That is stated in plaintiff's contentions. The last paragraph of his contentions is that "This plaintiff brought suit within two years of the discovery of the fraud set forth in the first and second claims herein." Then the issues of fact which are to be tried—well, all of the issues of fact,—they are listed on page 24 of the pre-trial order, and they

are, Did the plaintiff have actual [17] knowledge within two years—more than two years, or should he have had knowledge of both transactions? and the issues that are submitted for trial are stated at page 25 of the pre-trial order similarly, and page 26; so that the issue that we came to try before your Honor was a two-year statute of limitations. At the trial no farther or no different theory was advanced other than that two-year statute of limitations, and your Honor stated the rule, with agreement of counsel to it, thus, at page 156:

“The Court: The objection is overruled. I might explain to you I don’t think it makes any difference what you knew, if, being charged with this duty to investigate and bring an action, there was at hand information which pointed fairly directly to this matter, and that is the basis on which I am considering the materiality.

“Mr. Teiser: I think that is the proper basis, your Honor.”

Then in his opening brief he again affirms that position.

Now, as far as his proceeding under 70 (a) or 70 (e) or 67 is concerned, to us it doesn’t make a great deal of difference, because the State statute is applicable in any event, under the authorities. So there doesn’t seem to be any particular distinction between 70 (a) and 70 (e).

Collier says, at page 1591:

“The trustee under 70 (e) must establish the existence of all facts which were essential under the state law to authorize recovery by a creditor to lose

right of action of trustee as subrogated. In view of the wide scope of (e), it appears that the provisions of (a) (4) are unnecessary. If the trustee proceeded only in reliance on (a) (4) he would have to establish that the property he sought had been conveyed in fraud of creditors and then assert by [18] clause (4) it was vested in him. That is precisely what he can accomplish under (e).''

The statute of limitations, as we understand it, in any event, is the two years from the discovery or from the time it should have been discovered. Now, that is the theory under which the pre-trial order was formed, it is the theory upon which the case was tried, it is the theory of the questions which were submitted to your Honor for trial, and——

The Court: I don't think it is as simple as that, Mr. Reilly. I think it still has to consider the question of the statute of limitations as introduced in the Chandler Act. I don't think you can escape that.

Mr. Reilly: Well, on that point, your Honor, our view is this, that the statute of limitations had run prior to the Chandler Act in 1938. The right of the defendant not to be sued and become vested could not be constitutionally taken away from him. We haven't cited cases on that in our brief. I had that in mind, and, of course, was ill at the time. I have some cases now, if your Honor would care to have them submitted.

The Court: Well, I am trying to keep the discussion limited, because I may say I have fully

made up my mind, just as soon as I get this filed down so that I know what the plaintiff is talking about.

Mr. Reilly: Yes.

The Court: I was confused to some extent by the way that the briefs failed to hitch right in my mind. [19]

Mr. Reilly: Well, then, secondly, that is, in addition to the vested right of the defendant in the statute which had already run, we say that the Chandler Act having been postponed in its operation for several months,—I don't remember the number of months now—that that, under the very great weight of authority, not including New York, which counsel cited, which is in the minority, that that act is to be construed to act retrospectively, the time of postponement of its going into effect being the time allowed for the bringing of pending cases.

The Court: Well, that doesn't necessarily apply to a cause of action which arises under the Bankruptcy Act itself, rights given to the trustee by the Bankruptcy Act itself and not inherited.

Mr. Reilly: I think it does, your Honor.

The Court: And not inherited?

Mr. Reilly: I think it does, because the Act, the Chandler Act, if it confers any rights, in the same statute conferred limitations on those rights. It really is not a statute of limitations, but it is a limitation on the right itself, therefore it applies to everything created by the Chandler Act, and the limitation of two years after the adjudication, in

our judgment, applies to every action which the plaintiff can assert under the Chandler Act. That is our contention on that, your Honor.

The Court: Well, the Herget case, of course, deals with that, in that recently announced opinion of the Supreme Court [20] of the United States.

Mr. Reilly: The what?

The Court: The Herget case.

Mr. Reilly: Yes.

The Court: Herget vs. the Central National Bank.

Well, have you any further comment to make as to Mr. Teiser's now definition of his position?

Mr. Reilly: Well, I think he is going to come under 70 (e), in any event, or 67.

The Court: Well, I don't care to have your analysis of it. He has stated now pretty definitely where he thought his cause of action arose.

Mr. Reilly: Yes.

The Court: And how the trustee got hold of it.

Mr. Reilly: Yes.

The Court: By operation of law, under the Bankruptcy Act, he acquired a right which had previously existed in the bankrupt. Do you see anything more in it?

Mr. Reilly: I understand that to be his theory, yes.

The Court: And that is the idea upon which we are proceeding?

Mr. Reilly: Yes, your Honor, I think that is.

The Court: All right. Well, as I say, I have made up my mind in this case, and I determine it,



with that clarification, I determine the case in favor of the defendant. I have discussed this question—I have an opinion which is about ready, but I [21] wanted to clear this up, because I had, to a certain extent, still misconceived the attitude of the plaintiff, and I assumed that it was a right of action arising in creditors and inherited by the trustee. I am going to change that discussion of that to say that it is a right of action which arose in the bankrupt and was inherited, by operation of law, by the trustee. In the discussion of that point, now that we are talking about it,—yes?

Mr. Teiser: Why, I don't want to say anything to interrupt your Honor. I just hope that it won't be taken that that was my view as you just expressed it, by me saying nothing. If you want me to say what I meant, I will be very glad to do so.

The Court: Well, I have been sitting here for half an hour trying to get you to say what you meant.

Mr. Teiser: Well, I tried to say it, and I think you made a statement there that I don't agree with.

The Court: Well, we have talked in this record now for pretty near an hour, and the thing that you have said over and over and over again is that this was a cause of action which subsisted in the corporation and arose in it by virtue of the transactions which happened before the bankruptcy and was thereafter inherited by the trustee.

Mr. Teiser: If your Honor please, I agree that I said that, but I didn't say that it wouldn't be a cause of action which the bankrupt didn't have,



that the trustee would have had. I [22] tried to say that once before, that even though the bankrupt himself could not bring this suit the trustee could, because the bankrupt may have been precluded, because of his action, from ever bringing this suit, and the trustee could bring it. Now, the only derivative cause of action that I know of—I mean the only cause of action given by the Bankruptcy Act itself that I know of and not giving rights to the trustee is a cause of action for preference. Now, if the Bankruptcy Act meant that the only suit which a trustee could bring within two years after the—the former Bankruptcy Act—after his dismissal, after his discharge, why didn't they say that actions for preference should have been brought?

The Court: I am not talking about all the rest of them. I am talking about this one. Now, how do you say that the trustee got the right to bring the cause of action that didn't subsist in anybody before the time that he was appointed?

Mr. Teiser: I say that even though the bankrupt could not have brought this action——

The Court: Well, am asking you what provision of law you base that idea on?

Mr. Teiser: 70 (e)—70 (a).

The Court: Yes. I have already pointed out to you, and you have admitted, that he didn't have any property, and could not have had any property, in these specific titles, and that you weren't suing for it. [23]

Mr. Teiser: Well, under Section 70 (a) that is

—well, pardon me, your Honor, you have already decided the case. I certainly don't want to, and could not at this time,—

The Court: No, I am not asking you to say anything about my decision of the case. I am trying to decide this case directly,—

Mr. Teiser: I know you are.

The Court: —and decide it on the theories that you have advanced, and not on anything else, and if you can show me any provision of law, now, that says that this is not a derivative action, not an inherited action, I will consider it.

Mr. Teiser: Your Honor, the only difficulty between you and me is that I think your Honor feels that that is not an action which was given under the Bankruptcy Act. Now, that is the only difference between us, and yet it must be interpreted, and you are the one to interpret it, that is all. I maintain that under Section 70 (a) a cause of action is given to the trustee—a cause of action is given to the trustee—that the bankrupt may not—in some instances could and in many instances could not—that is the difference between 70 (e) and 70 (a): in many instances could not have brought the suit, in many instances.

The Court: I realize he could not have brought the suit, but the law doesn't say anything about that. It says "property of the bankrupt".

Mr. Teiser: Your Honor is not giving sufficient credit, I [24] don't think, to Section 70 (a) (6).

The Court: Yes, that refers to an entirely different thing. That refers to property that was

wrongfully taken and withheld from you,—in other words, a replevin case.

Mr. Teiser: Oh, I don't think that would be a replevin case.

The Court: All right, there is no authority to the contrary. Well, in any event, whether it be one thing or the other, I assume that this was as I have stated it.

I am going to read this as now amended:

“There can be no question that the claimed right of action arose in the bankrupt corporation or in the trustee and was inherited by the trustee. It does not take its initial genesis by virtue of the provisions of the Bankruptcy Act. Before the passage of the Act of 1938 it had been consistently held in the Ninth Circuit that to such an inherited cause of action the general statute of limitations prescribed by the particular state applied. This was the more logical, since it is a principle agreed upon with unanimity that where a right of action given by a particular state was conditioned in the same statute by a limitation the expiration of the period thus set would bar the remedy, notwithstanding the language of the old clause 11 (d). Universally the Courts maintain that where the general law of the state had provided the right in a creditor, if the law of general limitation set up by the state had barred the remedy in the creditors the trustee could not revive it. [25] This was founded upon the proposition that the trustee was enforcing a right based upon rights inherited from the bankrupt or the creditors and for which reme-

dies were given by state law. It has been intimated that the former provisions of the Bankruptcy Act had no effect upon this situation, since former Section 11 (d) was a withdrawal of juridical and representative capacity, therefore, that section was not intended as a statute of limitations but simply a termination of power. There were, it is true, cases holding that old Section 11 (d) was a true statute of limitations, and if the remedy of a creditor were alive on the date of filing of the petition it lingered on available to the trustee until two years after final closing."

Now, in that note I cite *Callaghan vs. Bailey*, 293 N. Y. 396, which is cited in the *Hastings* case.

"But practical considerations as well as authority constrained this Court to the opposite view. Repose is the aim of these local statutes, and the state policy should control. While, then, a case can be made for the retention of the remedy until a trustee could orient himself before bringing action, it should not be extended, as in this case, to thirteen years, unless the affirmative policy of the state permit."

The Court thereafter—I am not going to read the whole opinion—the Court thereafter holds that the statute had run and that there was an actual discovery or that the trustee knew sufficient facts so that he should have known of the existence [26] of the cause of action, and the Court as a subsidiary ground uses the ground of laches as far as the trustee was concerned. I did say in that regard, "The trustee and the present attorneys have de-

voted years of unflagging zeal to obtain recoveries in the Bank of California case, but it is the opinion of the Court that they deliberately spent their work and efforts upon that proposition as the main chance and that they did not as vigorously pursue the clues that might have led to a like recovery in the instant cause. There were sufficient facts of record long ago to have accomplished this purpose", and I discussed that to a further extent.

Now, with regard to Sections 70 (a) and 70 (c), I say, "These are not antagonistic, as contended for by plaintiff. By subsection (a) the trustee acquired all the rights which the bankrupt had in property which he transferred in fraud of creditors. By the former Section 47(a) (2) the trustee was given the rights of creditors as to all the property with which he became vested by virtue of the clauses of Section 70. In the Act of 1938 all these provisions now become a part of Section 70 and the causes of confusion no longer exist.

"The judgment will be that the statute of limitations has run against the cause of action and that subsidiarily the trustee has lost the right by virtue of laches."

Mr. Reilly: There will be findings?

The Court: I will give you a formulated copy of the opinion [27] as soon as it is run off, now, and thereafter you can present findings.

Mr. Reilly: Very well, your Honor.

The Court: Court is in recess until two o'clock.

(Thereupon, at 12:33 o'clock P. M., March 30, 1945, proceedings herein were concluded.)

[Title of District Court and Cause.]

CERTIFICATE

I, Cloyd D. Rauch, hereby certify that on March 30, 1945, I reported in shorthand certain proceedings had in the above entitled court and cause, that I subsequently caused my said shorthand notes to be reduced to typewriting, and that the foregoing transcript, pages numbered 1 to 28, both inclusive, constitutes a full, true and accurate transcript of said proceedings, so taken by me in shorthand on said date as aforesaid, and of the whole thereof.

Dated this 28th day of June, A. D. 1945.

CLOYD D. RENCH

Court Reporter.

[Endorsed]: Filed July 28, 1945. [29]

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[Endorsed]: No. 11116. United States Circuit Court of Appeals for the Ninth Circuit, George M. McBride, Trustee in Bankruptcy of Western Bond and Mortgage Company, an Oregon Corporation, Bankrupt, Appellant, vs. C. H. Farrington, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed August 3, 1945.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.



In the United States Circuit Court of Appeals  
Ninth Circuit

No. 11116

GEORGE M. McBRIDE, Trustee in Bankruptcy  
of Western Bond & Mortgage Company, an  
Oregon Corporation, Bankrupt,

Appellant,

vs.

C. H. FARRINGTON,

Appellee.

STIPULATION

It is stipulated by the appellant, through his counsel, Sidney Teiser, Esq., and by the appellee, through his counsel, John F. Reilly, that Exhibits Number 63, 65, 73, 76, 78, 83 and 84 are copies of newspaper articles appearing in the newspapers as shown on said exhibits and that the same newspaper articles clipped from the respective newspapers designated on said exhibits were among other newspaper articles and other memorandums and documents contained in a credit file of the Bank of California which is Exhibit 162 herein and which was an exhibit in the trial of an order to show cause against the Bank of California National Association, In the matter of Western Bond & Mortgage Company, a corporation, bankrupt, in Bankruptcy No. B16722 in the District Court of the United States for the District of Oregon, except that the newspaper articles as they appear in Exhibits Num-



ber 63, 65, 73, 76, 78, 83 and 84 do not contain headlines and in the articles as they appear in Exhibit 162 headlines are included.

It Is Further Stipulated, That Exhibits Number 89 to 102, both inclusive, are exhibits from testimony appearing and contained in Exhibits 103 and 103A (said exhibits 103 and 103A being a printed transcript of record in the case of Bank of California National Association, Appellant, against George M. McBride, Trustee in Bankruptcy of Western Bond & Mortgage Company, Appellee, Number 10062 in the United States Circuit Court Page 1—Stipulation of Appeals for the Ninth Circuit.)

It Is Further Stipulated by Appellant and Appellee herein that said exhibits herein mentioned, as well as all other exhibits transmitted by order of the District Court of the United States for the District of Oregon in their original form to this court may be considered in the appeal of this case as though copies of said exhibits were sent instead of originals, and this irrespective of whether or not any or all of said exhibits be printed in the transcript of record in the appeal in this cause.

Dated at Portland, Oregon this 25 day of July,  
1945.

SIDNEY TEISER,  
Attorney for Appellant

JOHN F. REILLY,  
Of Attorneys for Appellee.

So Ordered.

FRANCIS A. GARRECHT,  
Senior United States Circuit  
Judge

[Endorsed]: Filed July 27, 1945. Paul P.  
O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

CONCISE STATEMENT OF POINTS IN  
WHICH APPELLEE INTENDS TO RELY  
ON THE APPEAL AND DESIGNATION  
OF RECORD

I

Plaintiff below had two years after closing of  
the estate within which to sue, and thus suit was  
timely.

II

But if plaintiff had only two years from the  
time of the discovery of the fraud, this suit would  
still have been timely, since fraud was not dis-  
covered within two years previous to instituting  
suit.

III

And even if the Trustee had but two years from

the time when by reasonable diligence, the fraud alleged should have been discovered by him, still, this suit would have been timely, since the fraud could not, with reasonable diligence, have been sooner discovered.

#### IV

The Trustee was not guilty of laches.

#### V

Creditors should not be penalized because of the negligence of the Trustee, assuming the Trustee were negligent, and hence, even though the Trustee, through neglect, failed to discover the fraud, this suit was still permissible to be brought, and was timely begun.

### DESIGNATION OF RECORD

In the presentation of the above points, appellee designates all of the record transmitted by the Clerk below, under his certificate as the record on which he intends to rely.

Respectfully submitted,

TEISER & KELLER

SIDNEY TEISER

Attorneys for Appellant

United States of America,  
State of Oregon  
County of Multnomah—ss.

Due service of the within Points & Designation  
hereby accepted in Multnomah County, Oregon, by  
receiving a copy thereof duly certified.

JOHN F. REILLY,  
Attorney for Appellee

Sept. 11th, 1945.

[Endorsed]: Filed Sept. 13, 1945. Paul P.  
O'Brien, Clerk.

At a Stated Term, to wit: The October Term 1945, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the nineteenth day of November in the year of our Lord one thousand nine hundred and forty-five.

Present:

Honorable Francis A. Garrecht, Senior Circuit Judge, Presiding,

Honorable Clifton Mathews, Circuit Judge,

Honorable William Healy, Circuit Judge.

[Title of Cause.]

#### ORDER ON MOTION FOR ELIMINATION OF ORIGINAL EXHIBITS FROM PRINTED TRANSCRIPT

Upon consideration of the motion of appellant for an order eliminating from the printed transcript of record the original exhibits in above cause, and of the objections of appellee thereto, both papers filed November 15, 1945, and by direction of the Court,

It Is Ordered that the original exhibits in above cause need not be printed as a part of the transcript of record, but that counsel for respective parties may print as an appendix to their respective briefs such portions of said exhibits as are relied upon, the cost of printing such appendices to abide the determination of the appeal herein.